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PROPERTY TAX DELINQUENCIES, TAX SALES, AND TAX DEEDS

REVENUE OVERSIGHT COMMITTEE

A Report to the 50th Legislature

December 1986



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SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ASSIGNING THE REVENUE OVERSIGHT COMMITTEE TO REVIEW PROCEDURES FOR THE PAYMENT OF PROPERTY TAXES AND FOR THE SALE OF REAL AND PERSONAL PROPERTY FOR DELINQUENT TAXES.

WHEREAS, the Legislature has charged County Treasurers with responsibility for the collection of property taxes; and

WHEREAS, property taxes are payable in two installments during the year and the amount to be paid in each installment is a burden to certain classes of property taxpayers; and

WHEREAS, the Montana Code Annotated provides procedures for the sale of real and personal property for delinquent taxes; and

WHEREAS, the procedures for tax sales set forth in Title 15, chapter 17, MCA, fail to take into account an orderly and efficient administration of tax sales.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the revenue oversight committee be assigned to study:

(1) methods for allowing property taxes to be paid in a greater number of installments or through other payment procedures that may be adopted as an option by the tax collecting jurisdiction;

(2) uniform and equitable procedures and safeguards for the sale of real and personal property for taxes; and

(3) the establishment of uniform and equitable procedures and safeguards for the public and private sectors in the taking and disposal of real and personal property for taxes.

BE IT FURTHER RESOLVED, that the committee cooperate with local government representatives and other appropriate public and private institutions involved in taxation.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 50th Legislature and, if necessary, draft legislation to implement such findings.

Approved March 25, 1985.

PART ONE

PROPERTY TAX PAYMENT PROCEDURES

CHAPTER ONE

OVERVIEW OF PROPERTY TAX PROTESTS AND HOUSE BILL NO. 704

INTRODUCTION

This chapter results from the June 7, 1985, meeting of the Revenue Oversight Committee, at which time the motion was made and carried to "monitor" the implementation of House Bill No. 704 from the 49th legislative session. It is revised from a memorandum presented to the Revenue Oversight Committee in August 1985.

The contents of the chapter include general background relating to tax protests, a brief discussion of HB 704, and a progress report on the implementation of the bill's provisions.

A considerable amount of the material contained in the "Background" section is updated from a 1980 Legislative Council report titled "Payment of Taxes Under Protest". That report was prepared by Jim Oppedahl, Teresa O. Cohea, and J. Cort Harrington for the Revenue Oversight Committee.

BACKGROUND

Basic Legal Provisions

Since 1972 there has been a fundamental shift in part of the tax appeal procedure. Prior to 1972, the nonjudicial tax appeal procedure was vested in a three-member State Board of Equalization. That board was appointed by the Governor with the advice and consent of the Senate. This state board supervised the revenue collection activities of the state of Montana, as well as hearing appeals.

An obvious conflict of interest existed between a board that acted as both administrator and judge. This conflict led the framers of the 1972 Montana Constitution to mandate an independent tax appeal procedure. Article VIII, Section 7, states:

The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The

legislature shall include a review procedure at the local government unit level.

Until 1981, the traditional judicial avenue of tax appeal through district court remained essentially unchanged since the 1890's. However, in 1981 the legislature revised Montana statutes providing direct access to the courts by taxpayers seeking declaratory judgments. (Ch. 463, L. 1981.)

County Tax Appeal Board

The current county tax appeal board provisions are found in 15-15-101 through 15-15-104, MCA. (Sections 15-15-105 and 15-15-106 were repealed in 1981. (Ch. 501, L. 1981.)) The County Tax Appeal Board is appointed in each county by the Board of County Commissioners. The tax appeal board consists of three members who serve staggered 3-year terms. The county board must meet on the third Monday in April of each year to hear protests concerning assessments made by the Department of Revenue. The board must continue in session for the purpose of hearing protests until all protests are disposed of, but not more than 60 days after the Department of Revenue or its agent has mailed notice of classification and appraisal to all property owners and has notified the board.

A taxpayer who seeks a reduction in the valuation of his property must file an appeal with the county tax appeal board on or before the first Monday in June (of that year) or within 15 days after receiving a notice of classification and appraisal from the Department of Revenue, whichever is later.

The county tax appeal board may, during its hearings, change any assessment or fix the assessment at some other level. If the board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

Any person or the Department of Revenue on behalf of the state or a municipality aggrieved by the action of a county tax appeal board has the right to appeal to the State Tax Appeal Board.

State Tax Appeal Board

The State Tax Appeal Board (STAB) is composed of three members appointed by the Governor with the advice and consent of the Senate. Each member holds office for a 6-year term; the Governor designates the chairman. The STAB is statutorily required to be in session and open for the transaction of business every day except Saturdays, Sundays, and legal holidays.

Section 15-2-201, MCA, outlines the powers and duties of the STAB. The board has the duty to:

- (1) prescribe rules for the tax appeal boards of the different counties and may schedule meetings of county tax appeal boards;
- (2) hear appeals from decisions of county tax appeal boards; and
- (3) hear appeals from decisions of the Department of Revenue in regard to business licenses, property assessments, taxes, and penalties. Section 15-2-201, MCA, also provides that the STAB shall have the duties of an appeal board relating to such other matters as may be provided by law.

Any of the eligible appellants aggrieved by an action of a county tax appeal board may appeal to the STAB by filing a notice of appeal with the county tax appeal board and a duplicate thereof with the STAB within 20 calendar days after the receipt of the decision of the county board. The STAB must set a hearing for any such appeal and give at least 15 calendar days' notice of the time and place of such hearing. Section 15-2-301(4), MCA, provides that in any appeal from a county tax appeal board decision, the state board is not bound by common law, statutory rules of evidence, or rules of discovery. The STAB may affirm, reverse, or modify any county board decision. The decision of STAB is final and binding upon all interested parties unless it is reversed or modified by judicial review.

Section 15-2-302, MCA, provides that a person may appeal to the STAB any action of the Department of Revenue involving specific tax laws. The appeal must be made by filing a complaint with the STAB within 30 days following receipt of notice of any action by the department. The department is required to file a response to the complaint within 30 days. The STAB is required thereafter to hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

Other Matters Concerning STAB and County Boards

After a proceeding has commenced before the STAB but before arguments have been heard, the parties to the proceeding may petition the district court to make an interlocutory adjudication. The petition for such adjudication must be signed by each party to the proceeding. The court may grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, statute, or regulation, and do not require hearing the evidence to be resolved. The court can also consider whether the granting of such a petition would expedite the adjudication of the controversy. (Until 1981 this procedure was also available in protests before county tax appeal boards; however, in 1981 the 47th Legislature repealed sections 15-15-105 and 15-15-106.)

The 1981 Legislature also specifically provided that the STAB may order a refund to the taxpayer of taxes paid under protest. Any STAB judgment regarding a refund must be held in abeyance until time for appeal has passed or until the decision has been appealed to district court.

Finally, any party to an appeal before STAB aggrieved by a final decision of the board is entitled to judicial review. Such review must be instituted by filing a petition in district court in the county wherein the taxable property or some portion thereof is located. The party to such a petition must also serve a copy of the petition on STAB within 60 days after rendering of the final decision by the board, or if a rehearing is requested, within 60 days after the decision on that rehearing.

HOUSE BILL NO. 704: 49TH LEGISLATIVE SESSION

Situation and Purpose

As stated in the discussion of the legal provisions regarding protested taxes, any taxpayer may protest the assessment of his property. The protest of an assessment may involve either the property's classification or valuation. Either issue may be resolved through the administrative process or the judicial process, or both.

During the 1985 legislative session, HB 704 was passed and approved as a means of addressing problems caused by protested taxes. In very simple terms, the bill allows a county, municipality, or school district to have its taxable valuation reduced by the amount (of valuation) protested, but only if such protested valuation is 5% or more of the respective jurisdiction's taxable valuation, and the county commissioners, by resolution, request the Department of Revenue by July 15 to adjust the certified taxable value.

With the provisions of HB 704 applied, any county having the Department of Revenue reduce the county's certified taxable valuation should better be able to avoid the situation where the adopted mill levy will not provide sufficient revenue when taxes paid under protest are set aside.

With respect to such protests, jurisdiction-by-jurisdiction situations may vary, but most cause some degree of public finance problem. Some of these finance problems were brought to the attention of the 1985 Legislature. According to testimony presented before the Senate and House Taxation Committees during the 1985 legislative session, many local governments and schools suffer cash shortfalls due to taxes paid under protest. The shortfalls result from the situation where mill levies are set based upon a taxable value that includes property that is the subject of a protest. Section 15-1-402(6), MCA, requires that:

All portions of taxes and license fees paid under protest to a county or municipality shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any action or suit to recover the same.

Robert L. Laumeyer, Superintendent of Boulder, Montana public schools, outlined the situation in some taxing jurisdictions in testimony given to the Senate Taxation Committee.

Jefferson High has about ten million taxable value, of this three million is protested. If the voters at the special levy election approve the \$275,000 special levy and if H.B. 704 becomes law, the \$275,000 will be divided by the seven million and a levy of about 39 mills will be levied against all property in the High School District No. 1. Those people paying their taxes under protest will pay the same mill levy as everyone else.

\$275,000 will be raised by the school district and \$117,000 would be raised in the protested fund. If the protest fails, the \$117,000 would then be used to reduce the next years mill levy, as we presently use surplus funds.

If H.B. 704 does not become law, the \$275,000 approved by the voter will not become available to the school because the mill levy will be set by dividing the \$275,000 by 10,000,000 and a mill levy of 27 1/2 mills will be established. this will mean that \$192,500 will be raised as a spendable amount for High School District No. 1. The other \$82,500 will be held in the protested fund.¹

House Bill No. 704 Implementation

Since July 1, 1985, the effective date of House Bill No. 704, Montana's cities, counties, and school districts have been authorized to have the Department of Revenue adjust their respective taxable values by eliminating the value of properties that are the subject of a protest as of the first Monday of August. This adjustment may be made only if the value of property protested in the jurisdiction is at least 5% of the jurisdiction's taxable value, and if the Board of County Commissioners adopts a resolution by July 15 approving the adjustment.

As of July 15, 1985, the Department of Revenue had received notification from three counties that such a resolution had been adopted. The three counties were Daniels, Jefferson, and Yellowstone.

In implementing the provisions of HB 704, the department first found, in Daniels County, that the property that was the subject of a protest on August 5 (the first Monday in August) did not meet the 5% threshold. Consequently, Daniels County was not eligible for the adjustment.

Jefferson County, after first adopting a resolution requesting the adjustment of the county's taxable value, rescinded the resolution on August 19. The department, therefore, responded by certifying the taxable valuation of the county to include all taxable property in the county, including property that was the subject of a protest on August 5.

¹ Minutes of the Senate Taxation Committee, letter from Robert L. Laumeyer to Senator Tom Towe, Chairman, Senate Taxation Committee, March 26, 1985, Montana Legislative Council Library.

The remaining county to adopt the necessary resolution, Yellowstone, adopted it for the purpose of allowing school districts within the county to have their valuations adjusted, provided the 5% protest criterion was met within the school's jurisdiction. Initially, five school districts within Yellowstone County notified the Board of County Commissioners in Yellowstone County and the department. Those five districts were Shepherd #37, Laurel #7, and Laurel #7-70, Worden #24, and Broadview #21J. Following the initial notification, two other districts, Custer #15 and Billings Elementary #23, requested the adjustment. This was followed by notification that the Laurel districts had reconsidered their initial action and requested that no adjustment be made.

(Although the resolution adopted July 15 by the Yellowstone County Commissioners stated that "any other requests not yet received will receive blanket approval by today's action", the provisions of HB 704 clearly state that notification must be received by July 15. The department, therefore, may adjust the taxable valuations only in the school districts having submitted the notification on time.)

An analysis of the data showed that only Broadview #21, both elementary and high school districts, met the 5% protest threshold. (Shepherd elementary also appears to have met the threshold, but Sylvia Parman in the Yellowstone County Superintendent of Schools office reported that only the Broadview districts' valuations would be adjusted.)

Conspicuously absent from the list was Jefferson County whose local elected officials offered some of the most vocal testimony in favor of the bill during legislative hearings.

Interestingly, the Jefferson County Board of Commissioners had adopted a resolution in July authorizing and requesting the adjustment for protests. However, shortly before the levies were to be certified, the commissioners rescinded the resolution and included protested valuation in the county's taxable value.

Doug Schmitz, Board Chairman, explained that the board had initially supported the idea of adjusting the county's taxable value for the protests, but two problems were identified after development of the budget began.

The first problem was that the county's taxable value after adjustment would decline from \$17.4 million to about \$13.3 million.² If that adjustment was made, the 1985 taxable value of \$13.3 million would be some \$2 million less than the 1984 taxable value. Mr. Schmitz said that because Jefferson County is currently at the maximum levies allowed, there was not sufficient flexibility to allow for the adjustment for protests.

The second problem that arose stemmed from several disenchanted Jefferson County taxpayers who informed the commissioners that if a resolution allowing the adjustment for protests was implemented, several taxpayers with substantial property holdings in the county would protest 100% of their valuations, thus tying up several additional millions of dollars in taxable value.

According to Mr. Schmitz, the commissioners felt that it was in the best interest of the county to simply struggle through one more year of known protests than to risk the potential loss of the several additional millions in taxable value. He said the possible if not likely result of such grossly insufficient revenues would be critical reductions in county and possibly school personnel.

1985 marked only the first year that the provisions of HB 704 were available to Montana's local taxing jurisdictions. The preliminary evidence indicated that of Montana's 734 potentially eligible local taxing entities -- 56 counties, 127 incorporated cities and towns, and 551 school districts -- only two school districts, in Broadview, took advantage of the bill's provisions. Perhaps due to the July 1 effective date of the bill and the August deadline for setting levies, local governments simply had insufficient time to analyze the bill's implications. However, in 1986 no taxing jurisdictions chose to use the provisions of HB 704. With the specter of protested taxes remaining undiminished, it would appear that the option provided by HB 704 does not provide a satisfactory solution to local governments for taxes paid under protest.

² Susan Miller, Jefferson County Treasurer, estimated that the amount of protested value for 1985 would be about \$4.1 million. Additionally, the county had over \$1,662,000 (for 1979 through 1984) in protested taxes - not value - sitting in the special fund for protests.

CHAPTER TWO

SENATE JOINT RESOLUTION NO. 14

ISSUE ONE: PAYMENT OF PROPERTY TAXES

Senate Joint Resolution No. 14 (SJR 14), adopted by the 49th Montana Legislature, assigned the Revenue Oversight Committee the task of studying two issues related to property taxes.

First, the resolution requested a study of Montana's property tax payment procedures, especially those requiring semiannual payment. This part of the resolution also invited study into "other payment procedures that may be adopted as an option by the tax collecting jurisdiction".

Second, the resolution requested a study of Montana's procedures for the sale of property for delinquent taxes. This element of the project called for the study and establishment of "uniform and equitable procedures and safeguards for the sale of real and personal property for taxes".

Montana's property tax payment procedures, the first topic of the SJR 14 study, is the topic of this chapter. The first section of the chapter is a brief description of the property tax payment procedure. The second section summarizes data from a survey taken of Montana's 56 county treasurers. A small amount was learned from representatives of Montana's taxpayers, and that information is included in the final part of the chapter.

MONTANA'S SEMIANNUAL PAYMENT PROCESS

The payment process is, of course, preceded by the assessment and budget process. However, because the resolution is focused on the payment schedule, the remainder of this chapter focuses on the schedule as well.

One distinction must be noted at this point: the property tax payment schedule is

different for different types of property. For most property,³ tax payments are due in November and May. For some types of property, especially personal property, the payment schedule is 30 days following receipt of the notice. While this distinction is not mentioned in SJR 14, it is an important one, as shown by the county treasurers' comments.

After levies are finally set and a tax roll has been prepared by the county assessor, most county treasurers send out tax notices listing the various mill levies and amount of tax due for each levy. Tax notices are typically sent November 1. The taxes due as listed in the notice are payable in two installments, with one-half of the tax due on or before November 30, and the other half due on or before May 31. If the tax is not paid when due it is considered to be delinquent and subject to the collection process.

SEMIANNUAL PAYMENTS: THE COUNTY TREASURERS' PERSPECTIVE

SJR 14 states that semiannual installments of property taxes are "a burden to certain classes of property taxpayers". The resolution also implies that Montana's county treasurers are knowledgeable about the burden created by the semiannual payment schedule and requests cooperation between the Revenue Oversight Committee and local government representatives.

Based on the statements and implications contained in SJR 14, a survey was sent to each of Montana's 56 county treasurers. (See Appendix A.) Fifty-one of the surveys were returned, a response rate of 91%.

Interestingly, the responses indicate that if the semiannual payment schedule creates an undue burden at all, the problem is not severe by any means and perhaps not really a problem. The following is an overview of the responses to survey questions centering on the semiannual payment schedule.

³ As used above, "most property" includes all property in class four, the gross proceeds of metal mines, and the net proceeds of miscellaneous mines and oil and natural gas wells. Personal property is found in all classes except class four; the payment dates vary on personalty according to the specific type of property. Taxpayers may make payment in full at any time prior to May 31. Partial payment, except first-half and second-half payments as prescribed statutorily, is not permitted.

Question 1: Which classes of taxpayers are negatively affected by the semiannual payment of property taxes? (A list and description of Montana's 12 property classes [for 1985] was provided.)

Of the 51 respondents to the survey, 14 (27%) did not respond to this question; 9 (18%) did not know which classes were negatively affected; and 19 (37%) indicated that none of the classes were negatively affected.

Of the remaining respondents, nine (18%) indicated that some Class Eight property owners were negatively affected, and five (10%) thought Class Six property owners were negatively affected. However, Class Eight property and Class Six property is personal property; the taxes on most personal property is not paid in two installments, but in one payment 30 days after receipt of the tax notice.

Question 2: In your county, do taxpayers in any of the following categories have difficulty making semiannual tax payments? (Categories were: homeowners; main street businesses; industrial property owners; farmers and ranchers; timber people; utilities; and other.)

This question was somewhat of a rephrasing of the first question. In more conversational terms, it asked which taxpayers were negatively affected by semiannual payments. The treasurers were asked to list all of the taxpayer classes that had difficulty, allowing for more than one answer.

Twenty-three (45%) of the survey respondents did not answer this question, and eight (16%) indicated that none of the classes of taxpayers were negatively affected. The data in Table 1 show how the provisions of HB 704 would have affected five communities' schools in Yellowstone County.

Of those respondents indicating that some classes had difficulty with semiannual payments, eight (16%) listed homeowners; 12 (24%) listed main street businesses; and 14 (27%) listed farmers and ranchers.

Several of the respondents noted that difficulties experienced by main street businesses and farmers and ranchers resulted from personal property taxes, taxes usually paid in one payment and not semiannually.

Question 3: Which property tax payment schedule would be the best for you as a county treasurer?

This question was asked because the resolution requests that the study examine what "other payment procedures may be adopted as an option by the tax collecting jurisdiction".

Thirty-nine (76%) of the survey respondents indicated that semiannual payments work the best for county treasurers. Another eight survey respondents did not answer Question No. 3. Of the remaining six responses, two listed annual payments as best, one listed quarterly, two listed "other", and one did not know which schedule would work the best.

Question 5: Which property tax payment schedule would be the most likely to minimize the number of tax delinquencies?

This question was asked because there is an implication in the resolution that the semiannual payment schedule is (at least partially) responsible for delinquent taxes.

Much like the responses to Question No. 3, 31 (61%) of the treasurers responding indicated that semiannual payments were most likely to minimize tax delinquencies. Another 10 respondents (20%) did not answer Question No. 5, and seven respondents did not know which payment schedule would most likely minimize tax delinquencies. One respondent listed annual payments and three listed quarterly payments as the schedules most likely to minimize delinquencies.

Question 7: Which property tax payment schedule would produce the fewest delinquencies and the greatest efficiency in the county treasurer's office?

This question was asked because some degree of pragmatism must be interjected when analyzing the "what if" questions posed in Questions No. 3 and 5. Recognizing that the best schedule for the collectors may not be the best for the taxpayers, some balance must be a goal.

Thirty-two (63%) of the survey respondents indicated that semiannual payments would provide the best schedule for taxpayers and county treasurers. For some reason, 13 respondents (25%) chose not to answer Question No. 7. Of the remaining respondents, two thought annual payments would work the best; three listed quarterly payments; two did not know which schedule would work the best; and one listed "other".

SUMMARY OF SURVEY RESPONSES

Seventy-six percent of the responding county treasurers indicated that semiannual payments provide the best payment schedule for treasurers; 61% felt that a semiannual schedule also works best for taxpayers. When the efficiency aspects of the treasurers' offices and delinquencies are considered together, 63% of Montana's county treasurers indicated that semiannual payments would work the best.

Eighty-two percent of the treasurers responding to the survey fell into one of three categories: (1) they felt that no class of taxpayers is negatively affected by the semiannual payment schedule; (2) they did not know which class(es) are negatively affected; or (3) they did not respond to the question. Conversely, only 9 of the 51 respondents recognize any negative effects of the payment schedule.

At least from the county treasurers' perspective, the broad consensus is that there is no problem with semiannual payments of property taxes.

FURTHER NOTES REGARDING THE TREASURERS

At the Montana County Treasurers' Association's annual meeting in Lewistown in September of 1985, the treasurers indicated that if something were to be done with the payment schedule, the place to look was at business personal property. The current payment schedule requires businesses, whether owning real property or not, to pay the tax due on personal property within 30 days of receipt of the tax notice.

The treasurers further recommended that if a semiannual payment schedule was adopted for personal property that specific dates be adopted as due dates; most treasurers recommended April 30 and September 30.

In addition to the suggestion of semiannual payments on personalty, several treasurers cautioned that semiannual payments could lead to substantial problems with delinquencies. The potential problems with personal property delinquencies are perhaps more severe than with realty because of the mobility or transportability of most personal property. Therefore, special attention would have to be given to delinquency dates and collection provisions.

Other suggestions from the county treasurers included: (1) a state statutory requirement should be enacted that delinquent taxpayers' names be published in local newspapers; and (2) that the interest rate on delinquencies be raised.

With respect to the publishing requirement, the treasurers recognized that such action could cause embarrassment for some taxpayers, but for others it would provide an informal notice that taxes were delinquent.

Regarding higher interest rates on delinquencies, most of the treasurers suggested a 12% rate on the basis that some taxpayers are investing at rates of return that are higher than the rate charged for delinquencies.

Appendix B contains comments gleaned from surveys returned by the treasurers.

EFFORTS TO GET THE TAXPAYERS' PERSPECTIVE

In an attempt to get some input from the rarely heard- from taxpayers, letters were sent to the Montana Taxpayers' Association, the Montana Chamber of Commerce, and the Montana Bankers' Association. The letters specifically requested comments regarding semiannual property tax payments and, in general, Montana's property tax payment schedule.

Dennis Burr, responding on behalf of the Montana Taxpayers' Association, said that the Association did not really see any problems with semiannual payment of real estate taxes.⁴

⁴ Telephone conversation, Dennis Burr to Dave Bohyer, Montana Legislative Council, October 29, 1985.

Janelle Fallan, Montana Chamber of Commerce, responded that she was not aware of any problems with semiannual payments on real estate. The Montana Chamber did, nevertheless, poll its members on the issue.⁵

The Montana Bankers' Association was also contacted (at the suggestion of the Montana County Treasurers' Association) because of the relationship between banks and property owners, and the payment of property taxes.⁶ As of November 1, the MBA had not responded to the request.⁷ (In fact, no response was ever received from the MBA.)

SUMMARY

The questions raised in SIR 14 regarding Montana practices of semiannual property tax payments have been addressed, at least in part, by Montana's county treasurers. The indication is that the county treasurers feel that semiannual payment of real estate taxes works, period. As collectors of property taxes, they feel that semiannual payments allow sufficient flexibility to the taxpayer and enough efficiency in the treasurer's office that the system should remain as it is.

The treasurers also indicated that a change to semiannual payment of taxes on personal property could effect more equity in the property tax system. This suggestion is closely followed, however, with a caution that semiannual payments and the mobility or transportability of personal property, considered together, could result in problems of increased delinquencies and subsequent loss of anticipated revenues.

Montana's taxpayers have hardly been heard from on the issue of semiannual property tax payments. If the Montana Bankers' Association and the Montana Taxpayers' Association are representative of Montana's taxpayers, there is certainly no groundswell for change. If the associations are not representative, taxpayer

⁵ Telephone conversation, Dave Bohyer to Janelle Fallan, November 1, 1985.

⁶ Letter from Dave Bohyer to John Cadby, MBA, October 21, 1985.

⁷ A follow-up telephone call was made to John Cadby on October 29, 1985. Mr. Cadby was out of the office.

sentiment is still unknown and perhaps unknowable. Nevertheless, a clamoring for change is still unheard.

APPENDIX A
COUNTY TREASURER'S SURVEY

(51 responses returned)

1. The resolution states that property tax payments made in two installments are a burden to certain classes of property taxpayers. The assumption is that the burden is caused by the semiannual payments and not by the level of taxation. In your county, which class(es) of taxpayers are negatively affected by the semiannual payment of property taxes? (Rank from 1 to 12 with 1 being most negatively affected.)

<u>Unranked</u>	<u>Rank</u>	
1	a.	Class One (15-6-131; Mines net proceeds)
	b.	Class Two (15-6-132; Metal and coal mines)
1	c. 3,1	Class Three (15-6-133; Agricultural lands)
2	d. 1,3	Class Four (15-6-134 Residential/Commercial)
1	e. 5	Class Five (15-6-135; Coops; new industrial)
3	f. 2,4	Class Six (15-6-136; livestock/farm produce)
	g.	Class Seven (15-6-137; Some rural coops)
4	h. 1,2,6	Class Eight (15-6-138; personal property)
1	i. 1	Class Nine (15-6-139; buses/trucks/personal)
	j.	Class Ten (15-6-140; ore haulers/big trucks)
	k. 7	Class Eleven (15-6-141; utilities)
1	l. 4	Class Twelve (15-6-142; mobile homes)
	m. 19	None are negatively affected
	n. 1	All are negatively affected
	o. 9	Don't know
14		Respondent did not answer this question

2. In your county, do taxpayers in any of the following categories have difficulty making semiannual tax payments? (Check all that apply.)

- a. 9 Homeowners
 - b. 12 Main Street business people
 - c. 1 Industrial property owners
 - d. 14 Farmers and ranchers
 - e. 2 Timber people
 - f. Utilities
 - g. 4 Other (specify) _____
 - 8 None
- 23 Respondent did not answer this question

3. Assuming that property taxes will continue for the foreseeable future, which property tax payment schedule would be the best for you as a county treasurer? (Check one only.)

- a. 2 Annual
- b. 39 Semiannual
- c. 1 Quarterly
- d. Monthly
- e. 2 Other (specify) _____
- d. Don't know
- 8 Respondent did not answer this question

4. Why would the payment schedule you checked in Question 3 be best for you? _____

** See Appendix B for comments **

5. In your opinion, which property tax payment schedule would be the most likely to minimize the number of tax delinquencies? (Again, assume property taxes will continue.)

- a. 1 Annual payment
- b. 31 Semiannual payment
- c. 3 Quarterly payment
- d. Monthly payment
- e. Other (specify) _____
- f. 7 Don't know
- 10 Respondent did not answer this question

6. Why would the payment schedule you checked in Question 5 minimize the number of tax delinquencies? _____

** See Appendix B for comments **

7. In your opinion, which property tax payment schedule would produce the fewest delinquencies and the greatest efficiency in the county treasurer's office?

- a. 2 Annual payment
- b. 32 Semiannual payment
- c. 3 Quarterly payment
- d. Monthly payment
- e. 1 Other (specify) business personality in 2 payments
- f. 2 Don't know
- 13 Respondent did not answer this question

8. Which of the following methods would work best as a new system for collecting property taxes? Which one would work second best? (Write in "1" for the best, "2" for the second best.)

- a. 1,1,5 Payment by credit card
- b. 1,3,4 At any time after due date, scheduled partial payments with interest
- c. 4 Prepayment of succeeding years' taxes
- d. * More stringent penalties or higher interest payments on delinquent taxes (* 31 ranked as #1; 3 ranked as #2)
- e. ** Immediate tax sale upon delinquency (**3 ranked as #1; 8 ranked as #2; 1 ranked as #3)
- f. 1,1,2 Other (specify) _____

____ * See Appendix B for comments * ____

1,1,1 None

10 Respondent did not answer this question

9. Do you have any other comments regarding semiannual tax payments, collections, or delinquencies? _____

** See Appendix B for comments **

APPENDIX B

COMMENTS FROM COUNTY TREASURER'S SURVEY

October 1985

QUESTION 1. THE RESOLUTION STATES THAT PROPERTY TAX PAYMENTS MADE IN TWO INSTALLMENTS ARE A BURDEN TO CERTAIN CLASSES OF PROPERTY TAXPAYERS. THE ASSUMPTION IS THAT THE BURDEN IS CAUSED BY THE SEMIANNUAL PAYMENTS AND NOT BY THE LEVEL OF TAXATION. IN YOUR COUNTY, WHICH CLASS(ES) OF TAXPAYERS ARE NEGATIVELY AFFECTED BY THE SEMIANNUAL PAYMENT OF PROPERTY TAXES? (RANK FROM 1 TO 12 WITH 1 BEING MOST NEGATIVELY AFFECTED.)

All should pay their fair share of the burden. Very few people have mentioned a different type of payment schedule. (1)

We are unfamiliar with different classes of property taxation, but find both small and larger businesses have difficulty paying both personal and real property taxes. (11)

Class eight property may be negatively affected because the whole amount is due in 30 days; there is no definite date on which the taxpayer can plan on receiving his statement; there are two separate payments. (16)

None are negatively affected except leased personal property. (20)

The ones that are delinquent would be negatively affected, even though payments were made at different times. (24)

I believe no one is affected by two payments as it gives the taxpayer ample time for payment. Most delinquent taxes belong to a particular group of taxpayers and are repeatedly so. (27)

Leave real estate alone and give personal property (including mobile homes) two definite due dates other than real estate due dates. (31)

Seasonal work has an effect on semiannual payments for real property taxes. (38)
All taxpayers are least negatively affected by semiannual payments. (42)

Leave real estate taxes alone. Put heavy equipment using SM [special mobile] plates on personal taxes and split into two payments with definite due dates. (44)

Leave real estate as it is. There are no problems with personal property taxes paid semiannually. (I recommend April and September). Personal property-mobile homes should have a definite due date just as real property does. (45)

QUESTION 2. IN YOUR COUNTY, DO TAXPAYERS IN ANY OF THE FOLLOWING CATEGORIES HAVE DIFFICULTY MAKING SEMIANNUAL TAX PAYMENTS?

Very few would miss payments no matter what payment schedule is used. (1)

Personal property taxes currently paid in one installment should be split as are real property taxes. (6)

Business property that is separate from real property and is due in one payment within 30 days of notice is most affected. Our county allows partial payments on personal property, which mitigates the situation somewhat. (9)

Personal property taxpayers find it difficult to make payment in full within 30 days of receipt of notice. (12)

Semiannual payments are acceptable. (19)

Business people have difficulty with personal property tax payments. (20)

Some large city specials are at hardship for city residents as these are made with first payment. (24)

Some large town and city specials have exhibited difficulty. (27)

Non-real property business people have difficulty in making semiannual tax payments. (38)

Farmers and ranchers have difficulty in meeting personal property tax payments. (40)

Farmers and ranchers with large personal property tax payments have difficulty as well as other personal property taxpayers. (49)

Land developers have difficulty with semiannual tax payments. (51)

QUESTION 3. ASSUMING THAT PROPERTY TAXES WILL CONTINUE FOR THE FORESEEABLE FUTURE, WHICH PROPERTY TAX PAYMENT SCHEDULE WOULD BE THE BEST FOR YOU AS A COUNTY TREASURER?

Payment schedules should remain as they are with the exception of mobile homes, which could be due at the end of December instead of September of each year. (27)

Schedule payments should be semiannual for all property taxes. (38)

Each half should be due within 30 days of receipt of the statement with the exception of businesses which should be allowed 60 days. (51)

QUESTION 4. WHY WOULD THE PAYMENT SCHEDULE YOU CHECKED IN QUESTION THREE BE BEST FOR YOU?

Semiannual payments allow for better budgeting and investments, as well as for district schools. Additionally, we have developed staffing patterns to anticipate peak tax periods. (1)

To change to quarterly or monthly tax payments would entail considerable expense for billing, penalty and interest programs, increased staff. (2)

Semiannual payments are most convenient for all concerned. (4)

The present payment schedule is suitable. (7)

The computer system we use now is compatible with semiannual payment schedules. (8)

Quarterly payments would improve cash flow when reserves are small. Our delinquency rate is not overwhelming and is due to economic conditions rather than payment schedules. Personal property tax payment schedules should be studied since they are the most difficult to collect. (10)

Payment schedules more frequent than semiannually would facility more paperwork. (12)

A more frequent payment schedule would require an increase in staff and office space, resulting in higher taxes. (13)

Changing to a quarterly or monthly schedule would not affect the delinquency rate and the cost of changing the system would be prohibitive. Would it be picked up by the taxpayer? (14)

Property owners are accustomed to paying their taxes in semiannual payments. (15)

If taxes were paid annually, only one receipt would be issued and less part-time help would be required. (16)

A change would result in much expense to develop new receipting and accounting procedures. (17)

Reprogramming and additional staff costs would be an additional burden to the taxpayer if the tax payment schedules were changed. (18)

Bookkeeping problems would arise if any other tax payment schedule were implemented. (20)

In a small, non-automated office, semiannual payments are easier to handle. (21)

Reprogramming of automated equipment would place an additional burden on the taxpayer. (23)

Programming for quarterly or monthly payments would be a hardship to the taxpayer, while annual payments would require a much larger staff. (24)

Both county treasurers and taxpayers are geared to semiannual payments. Annual payments would be a burden; quarterly or monthly payments would be too much work. (26)

After September 30 mobile home taxes become delinquent, causing a conflict when a current tax receipt is written for a newly moved mobile home, when the tax is actually delinquent. (27)

People don't want payment schedule changes. (28)

Some of the ranchers with larger personal property tax statements find it difficult to pay the tax all at one time. (29)

Any payment schedule other than semiannual is "silly". It's difficult enough to get taxpayers to make semiannual payments. (30)

Our computers are programmed for semiannual payments, which affect all county bookkeeping. The cost for change and additional personnel would be prohibitive. (32)

The semiannual payment schedule works well in our county where delinquency is less than 1%. (35)

We have a large number of retired county residents who are accustomed to semiannual payments, and this system works well for us. (37)

If taxes were paid more often than semiannually, increased taxes would be required to implement such a change. (45)

The time element in preparing tax notices is a factor to be considered, as well as changes to county and school budgets. (49)

Most businesses find it difficult to pay personal property taxes within the 30 day limit. Collecting taxes more frequently would require more work for county treasurers. (51)

QUESTION 5. IN YOUR OPINION, WHICH PROPERTY TAX PAYMENT SCHEDULE WOULD BE THE MOST LIKELY TO MINIMIZE THE NUMBER OF TAX DELINQUENCIES? (AGAIN, ASSUME PROPERTY TAXES WILL CONTINUE.)

I don't believe any change in payment schedules will make a difference. (27)

QUESTION 6. WHY WOULD THE PAYMENT SCHEDULE YOU CHECKED IN QUESTION FIVE MINIMIZE THE NUMBER OF TAX DELINQUENCIES?

Annual payments would be too great a burden for the taxpayer. Quarterly or monthly payments would cost counties more for operations. (1)

Our delinquency rate is 5% and is usually comprised of the same persons year after year. In the past six or seven years the county has not taken a tax deed on any real property. If taxpayers prefer monthly or quarterly payments, they could deposit these funds in interest bearing accounts. (2)

Most taxpayers are accustomed to semiannual payments, and the schedule should remain as it is. (4)

The same taxpayers appear to be delinquent in their payments each year. Changing the method of billing/collecting would change the delinquents. (7)

Taxpayers could more readily handle four installments rather than semiannual payments, since the first semiannual payment is due near Christmas and income tax season. (8)

Semiannual payments for real estate work. If personal property were taxed semiannually, delinquencies should receive immediate action by the end of the calendar year since mobile homes change ownership frequently and can be moved, and many businesses change ownership frequently or declare bankruptcy as well. (9)

Many taxpayers cannot make large payments at one time. (12)

I would prefer that those who pay their taxes annually receive a discount. This system works well for North Dakota. A taxpayer wishing to make monthly payments could borrow the funds from a bank and make payments to the bank. Counties could also accept credit card payments, but this method could pose problems. (13)

Business and livestock property taxes should be billed semiannually. Payments on mobile homes should be made annually to facilitate record-keeping. (14)

Quarterly or monthly payments would lead to more people forgetting to pay. Taxpayers are accustomed to November and May payments, and annual payments may be a hardship for some. (16)

Semiannual payments will not further minimize delinquencies, but will not increase them either, as would quarterly or monthly payments. (17)

Semiannual payments permit the taxpayer to make a smaller payment in the fall and to save for the second half, due six months later. (19)

Quarterly payments would be easier for the taxpayer to make. (23)

The more lenient the counties, the more lax the taxpayers. (26)

I believe a change would not correct any situation in this county. Increasing frequency of payments will increase operating costs. Taxpayers need to be responsible to save funds for payment of taxes. (30)

Changing payment schedules could increase delinquency rates. (28)

Semiannual personal property payments would encourage taxpayers to be more timely in their payments. (29)

Real property needs to be left as it is. Semiannual payments on mobile homes and personal property (April and September) would be an improvement. (32)

Semiannual payments would provide equality for all taxpayers. (38)

Payment schedules should remain as they are. Quarterly or monthly payments would add to county expenses. Personal property schedules could be split into semiannual payments. (44)

Semiannual payments work for us and we have no delinquency problem yet. (45)

Monthly tax statements would result in more delinquencies and county expense. Semiannual payments are preferable. (49)

Due dates for real property taxes could be changed to September 30 and March 31 to alleviate congestion near the holidays. Personal property taxation for farms and ranches may benefit by semiannual payments, and allowing businesses 60 days in which to make two payments (without penalty and interest) would appear to be more reasonable. (51)

QUESTION 7. IN YOUR OPINION, WHICH PROPERTY TAX PAYMENT SCHEDULE WOULD PRODUCE THE FEWEST DELINQUENCIES AND THE GREATEST EFFICIENCY IN THE COUNTY TREASURER'S OFFICE?

Semiannual real estate payments. (1)

QUESTION 8. WHICH OF THE FOLLOWING METHODS WOULD WORK BEST AS A NEW SYSTEM FOR COLLECTING PROPERTY TAXES? WHICH ONE WOULD WORK SECOND BEST? (WRITE IN "1" FOR THE BEST, "2" FOR THE SECOND BEST.)

None of the options listed are preferable. (2)

Annual payments with discounts offered for full payments. (13)

Raising the interest rate from 10 to 12% would be a good idea. A banker confided to me he is telling his clients not to pay their taxes (if they are financially troubled) because county interest rates are lower than bank interest rates. (16)

The redemption interest in HB 177 (Ch. 313, L. 1985) should be much higher and the majority should go to the tax sale purchaser or assignee. This action could result in increased delinquent tax sales, decreasing county accounts receivable. It is not in the best interest of a county to end up with tax deed property than can only be sold at fair market value, as real estate deeded to a county and not redeemed is not taxable, creating double indemnity. (17)

None of the methods listed would be a viable option for this county. (18)

The present methods work best with the exception of personal property which is leased rather than owned. (20)

Collection as soon as statement is received by the taxpayer or by due date would be preferable. (26)

If interest rates were raised to 20% and the 2% penalty raised to 5%, counties would not be used as lenders. (28)

If Montana would charge an interest and penalty rate greater than that charged by banks the delinquency problem might be resolved. (30)

Higher interest rates should be charged. (31)

Interest rates should be raised from 10 to 12% and payments left on a semiannual schedule. Credit cards should not be used for this purpose. (32)

Credit cards should not be considered. (33)

I would not like to see present collection methods changed. (35)

A list of delinquent taxpayers could be published in a local newspaper to protect the county treasurer. (36)

Interest rates should be increased to 12% and the penalty rate left as is. More immediate action should be taken on delinquent real estate taxes. (38)

Interest rates should be increased to 12% and the penalty rate left as is. (39)

Increased interest should be charged for redemption. (40)

Interest rates should be increased to 12% and the penalty rate left as is. (41)

If the interest rate for redemption were increased substantially, it might encourage payment of taxes by tax sale certificate and discourage delinquency due to a high rate of redemption. (42)

QUESTION 9. DO YOU HAVE ANY OTHER COMMENTS REGARDING SEMIANNUAL TAX PAYMENTS, COLLECTIONS, OR DELINQUENCIES?

Counties need to exercise care with regard to laws pertaining to separate personal property. Attachment upon delinquency is probably the best and most effective method toward county solvency. Taxes must be considered to be a necessary expense by the taxpayer if certain levels of services are expected of such entities as law enforcement, hospitals, and schools. (1)

Leave the present system alone. (3)

Semiannual payments may be more appropriate for business and trucks with SM (special mobile) plates as the present system sometimes creates financial hardship. (4)

Real property schedules should remain the same. If personal property is changed to a semiannual payment schedule, it should have due dates other than those for real

property. Since personal property can be moved, what guarantee of payment is there if the property is moved to another state? (5)

Leave real property as it is. Personal property could be collected semiannually, with the first payment due in 30 days and the second payment due on September 30. (16)

If taxes were collected quarterly or monthly, operating expenses would increase dramatically for county treasurers. (7)

I believe the present rate of interest is high enough for the average taxpayer; however, some people invest their money at a higher rate of interest and allow their taxes to become delinquent. (8)

Our county has developed legal notices, sheriff's writs and sales, and a lien on real property to collect personal property taxes, which are the most difficult to collect. I would suggest a business license as an alternative to taxing business personal property. Mobile homes are easier to collect on, especially with improved legislation in this area. (9)

A change in payment schedules would make no difference in our county, which is economically depressed. Most taxpayers (including retirees) have no problem with semiannual payments. Some pay their real property taxes annually in the spring; nonresident property owners often forget as their state of residence may have differing procedures; some unemployed persons are letting their property go back to the financer, i.e., FHA, HUD, or the banks. We have those, too, who repeatedly fail to pay their real property taxes. Mobile homes are not much of a problem; however, small businesses which have failed present a larger problem. (11)

If partial payments could be accepted for first and second due dates, some taxpayers may become current. (12)

Most homeowners have tax escrow accounts and make monthly payments to these accounts. (13)

In many cases it is not property taxes which are delinquent, but SID's. Our collection rate has been good until the past two or three years. Responsible taxpayers should not have to pay extra for restructuring the payment schedule because of delinquent taxpayers. A discount for payment in full could be a consideration. Possibly water projects and cities should handle their own billing. (14)

Personal property taxes could be paid semiannually with definite due dates. (15)

MCA procedures for tax deed action should be rewritten as they are vague and subject to litigation. (16)

Hearings on this matter should be open to county treasurers. (17)

Semiannual payments are most feasible and benefit the taxpayer by putting less burden on the county. (18)

The present method of taxation is quite sufficient. Some taxpayers believe they

should be billed at the beginning of the year rather than at the end of the year and that SIDs should be split rather than billed on the first installment. (19)

Mobile homes and personal property should be on an April 30 and September 30 schedule. Real property taxes should remain as they are. Penalty and interest should be raised on delinquent taxes. (20)

A change in collection procedures will not help. (21)

Real property and mobile homes should be on the same schedule. Personal property taxes should be due December 31. (24)

A provision could be made to omit penalty and interest on real property taxes as long as the tax is paid in full before January 1. This procedure seems to work well for other states. (25)

I would prefer semiannual schedules for personal property and mobile homes with June 30 and December 30 due dates. (26)

We have problems collecting personal property taxes when owners move away from the county, but are satisfied with real property taxation schedules. (28)

Real property taxation should remain as it is. Taxes on personal property and mobile homes should be collected semiannually but on dates other than those for real property. (31)

Personal property taxes should be collected semiannually and have a specified due date. Real property taxes should remain as they are. Credit card payments should not be accepted. (33)

Personal property taxes could be collected on April 30 and September 30 or June 30 and December 31. Real property should remain as it is. (34)

Real property works well as it is. Credit card payments should not be accepted. Personal property taxes should be collected on September 30 and monthly payment should not be a consideration. (35)

Some taxpayers are delinquent by choice. Real property needs to remain as it is. Personal property taxes could be collected semiannually in June and September. (37)

Real property taxation can remain as it is. Personal property taxes could be collected in two payments on payment dates agreed upon by county treasurers and the Department of Revenue. (39)

Real property taxation should be left as it is. Personal property could be collected semiannually at a time other than when real property taxes are due. The first-half due date for mobile home taxes could be set to encourage county assessors to send out assessments in the spring, prior to the May due date for second-half real property tax payments. (36)

Real property should remain as it is. Mobile homes could be billed as real property is but with differing due dates. SM (special mobile) plates need to be reviewed for change as 100% of the tax is due prior to their issue which often presents a hardship to the owner. (38)

Real property taxes are sufficient as they exist. Personal property and mobile home taxes should be due in 30 days (first installment) and by September 30 (second installment). (40)

Legislation needs to be enacted to publicize the names of delinquent taxpayers in local newspapers. It is a good, effective collection tool. Real property should remain in two installments. Personal property should be billed March 31 and August 31 and be due April 30 and September 30. Mobile home taxation procedures should remain as they are. (41)

Real estate should remain as it is. Personal property and mobile home taxes should be paid in semiannual payments with the same specific due dates. (42)

Real property and mobile home taxation don't need to be changed. Personal property should be taxed semiannually with April 30 and September 30 due dates. (43)

Taxes on heavy equipment and all personal property should be payable semiannually. (44)

There are no problems with real property taxation as it exists. I recommend personal property payment schedules of April and September. Payment for the first half of mobile home tax should have a definite due date similar to that of real property. (45)

Personal property taxes should be due semiannually as are mobile home taxes. No changes need to be made in real property schedules. (46)

Semiannual real property payments work well in our county. Any changes would require considerable changes in our computer programs and additional costs to taxpayers. (47)

Real property taxation works as it is. Personal property could be collected semiannually on specific dates. (48)

Make no changes in real property taxation. Personal property taxes could be made payable in semiannual payments. (49)

Do not make changes in real property taxation. Personal property taxes could be made payable in two payments. (50)

Accepting partial payments would require more paperwork, which is also tremendous when a sheriff's sale is involved; often these writs are not served in a timely manner. Anything but semiannual payments would be difficult as our county has 55,000 real property tax notices, and 6,000 each for mobile homes and businesses. There must be a way for contractors to pay for SM [special mobile] plates semiannually rather than paying in full when they purchase the plates. (51)

CHAPTER THREE

PROPERTY TAX PROTESTS AND REFUNDS

Responses from Interested Parties on Suggestions from the Revenue Oversight Committee

BACKGROUND

During the 1985 legislative session, much attention was given to the plight of local jurisdictions suffering the effects of large property tax protests. As a result, House Bill No. 704 was adopted as an attempt to provide relief. This relief was in the form of a discretionary exclusion of the taxable value of property that was the subject of an appeal. The bill was effective July 1, 1985.

Following the July 1 effective date of HB 704, it was discovered that only two school districts in the entire state qualified and elected to utilize the provisions of the bill. The apparent effect of the legislation was not what had been envisioned by the 49th Legislature. Consequently, the Revenue Oversight Committee decided to "monitor" the implementation of the legislation.

The Revenue Oversight Committee asked its staff to contact a number of interested groups for their responses to suggestions made by the Committee on possible alternatives to Montana's property tax appeal, protest, and refund provisions.

This report examines the responses to the suggestions of the Revenue Oversight Committee.

SCOPE OF EXAMINATION

The motion adopted by the Revenue Oversight Committee requested that staff work with "the Montana Association of Counties, the Montana School Boards Association, and other interested parties" to further study several alternatives to Montana's protest procedures. As a result of the motion, the following organizations were contacted for their input:

Montana Association of Counties
Montana School Boards Association
Montana County Assessors' Association
Montana County Treasurers' Association
Montana League of Cities and Towns
Montana Taxpayers' Association
Montana Chamber of Commerce

The above named organizations were asked to respond to the following statements.
(The statements were also part of the Committee's adopted motion.)

The measures under consideration included:

1. Allowing one-half of protested taxes to be spent by local jurisdictions and requiring the other one-half to be deposited in an escrow-type account. Local jurisdictions would have to receive the approval of the local governing body and the Department of Revenue before any of the protested funds could be spent.
2. The interest earned on the escrowed one-half of protested taxes would be used to help local jurisdictions substantially harmed by protested taxes or refunds stemming from protests.
3. Allowing refunds of protested taxes to be in the form of a property tax credit for succeeding years' property taxes, until the refund was paid in full. Such a provision would include interest on the refund at a rate higher than the current "market rate". (Idaho has this type of arrangement and pays interest at 18%.)
4. Allowing the Legislature to make loans (from the interest earned on the escrowed one-half of protested taxes) to local jurisdictions unable to function because of protested taxes. The loans would have to be repaid to the Legislature, i.e., the state general fund, with interest. Such repayments would come from local levies which would be excluded from local levy limits.
5. Requiring a threshold mechanism that would require tax appeals/protests to be sufficiently large that the local jurisdiction could not handle the loss in the course of current operations and resources. The threshold under consideration is that the property assessment being appealed would have to exceed 1/4 of 1% of the jurisdiction's (probably county's) taxable valuation.

RESPONSES

Written responses were received from the Montana Association of Counties, the Montana School Boards Association, the Montana League of Cities and Towns, and the Montana County Assessors' Association. A telephone response was received from the Montana County Treasurers' Association.

Although telephone responses were received from both the Montana Taxpayers' Association and the Montana Chamber of Commerce, the responses were that neither organization had any comments on the suggestions under consideration.

The following is an attempt to summarize the responses received from the above-mentioned groups. However, justice simply cannot be done by summarizing the responses; therefore, a copy of the responses received from the groups is included as an integral part of this chapter as Appendix A. Please note that the response from the County Treasurers' Association is a staff memo to file formalizing a telephone conversation between staff and Dick Michelotti, Cascade County Treasurer and President of the Montana County Treasurers' Association.

SUMMARY OF RESPONSES

Most of the respondents indicated some support for the option of allowing local jurisdictions to spend one-half of the protested tax. Some thought that escrowing the remaining one-half in a state-controlled escrow account could prove workable; others thought including the state would only lead to problems. The Montana Association of Counties (MACO) viewed the half-and-half proposition as administratively unwieldy.

Some support was shown for the option allowing the legislature to make loans to local governments (for the refunding of the spent one-half of the protested amount). However, the funding source proposed for the loans, i.e., one-half of the protested taxes and the interest earned thereon, received some criticism. Most respondents felt that interest earned on protests has historically been a revenue source reserved to local jurisdictions; and they would like to see the revenue source protected!

MACO indicated that since larger protests typically result from state action, either statutory or administrative, state grants might be more appropriate than loans. MACO also suggested that a new local levy be allowed statutorily. The levy would have to be used specifically for refunding protested taxes. (This assumes, of course, that local governments are allowed to spend protested taxes.)

Responses were generally positive to requiring a threshold mechanism. MACO also suggested an alternative to the 1/4 of 1% threshold, that central assessment be the threshold criterion.

The one option that did not receive much support was the idea of allowing protest refunds to be credited towards future years' taxes.

In general, the organizations representing local governments -- MACO, the Montana League of Cities and Towns, and the MSBA -- showed overall support for the Revenue Oversight Committee's efforts.

Representatives of local elected tax officials -- the Assessors' and Treasurers' Associations -- also showed support for the committee's efforts, but apparently would prefer to maintain the current system rather than adopt sweeping changes.

SUMMARY OF PART ONE

Since before Montana was a state, the payment of property taxes has been an issue before legislative bodies and the courts. Property assessment appeals and property tax protests have been occurring in Montana for more than 100 years -- and they are likely to continue.

From time to time, the Legislature has attempted to alleviate the problems, as they are experienced by taxpayers and by governmental entities reliant on property tax revenue.

During the 49th legislative session and the ensuing interim, the Legislature examined and proffered several alternatives:

1. With the adoption of HB 704 in 1985, local taxing jurisdictions, under certain circumstances, could choose to discount their

- respective total taxable value by the amount of taxable value under protest. The result: The alternative provided in HB 704 was universally ignored.
2. SJR 14 directed the Revenue Oversight Committee to examine alternatives to the current (and historical) practice of semiannual payment of property taxes. The result: A substantial majority of Montana's county treasurers recommended the continuation of semiannual payments. Representatives of the taxpaying public, principally the Montana Taxpayers' Association, had no complaint about the semiannual payment schedule. In no case could a legitimate argument be made that the public was clamoring for a change in the payment schedule.
 3. A proposal from the Revenue Oversight Committee was put before taxpayers, tax collectors, and tax spenders that would have allowed local jurisdictions to spend a portion of taxes paid under protest. The result: Respondents generally reacted positively, but without conviction.

So it would seem that property tax payment problems will continue and solutions will continue to be proposed. And while an appropriate and acceptable solution may be somewhere down the road, it is not yet visible over the horizon.

PART TWO

PROPERTY TAX DELINQUENCIES, TAX SALES, AND DEEDS

1997-1998

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CHAPTER FOUR

SENATE JOINT RESOLUTION NO. 14

ISSUE TWO: DELINQUENT PROPERTY TAXES, TAX SALES, AND DEEDS

Senate Joint Resolution No. 14 (SJR 14), adopted by the 49th Montana Legislature, assigned the Revenue Oversight Committee the task of studying two issues related to property taxes.

First, the resolution requested a study of Montana's property tax payment procedures, especially those requiring semiannual payment. A report was prepared for the committee on this element of the study in November 1985. The indication from that report was that there were no significant problems with Montana's property tax payment procedures.

The second issue to be addressed was Montana's procedures for the sale of property for delinquent taxes. As stated in the resolution, the committee was required to study and consider the establishment of "uniform and equitable procedures and safeguards for the sale of real and personal property for taxes".

An examination of Montana's current procedures for the sale of property for delinquent taxes is the subject of this chapter.

INTRODUCTION

From the earliest days of Montana's history as a state, property taxation has played a role that has been, arguably, more important than any other form of taxation in the state. Prior to the adoption of the individual income tax, corporation license and income taxes, franchise taxes, excise taxes, etc., state government relied on property taxes as its primary source of revenue.

Perhaps because of the state's early reliance on property taxes, the Second Legislative Assembly adopted statutory language setting out the procedure for the

levying and collection of property taxes.⁸ The Laws of Montana, 1891, Division One, Laws Relating to Revenue and Appropriation, "An Act Concerning Revenue", sections 90 through 162, et al., laid out the foundation for Montana's property tax system, a system that was appropriate for governmental purposes in the late 19th century. While much of that system has been significantly amended or even repealed since its adoption in 1891, much of it still exists in 1986 in substantially the same form as originally adopted.

With increases in economic activity and property ownership, changes in kinds of property owned by individuals and subjected to taxation, and shifts in the revenue sources available to the state and local taxing jurisdictions, some problems have arisen in property taxation from situations that were most likely unforeseen in 1891.

Recalling that the charge of the committee under SJR 14 was to examine "uniform and equitable procedures and safeguards for the sale of real and personal property for taxes", perhaps the best place to begin is with an examination of Montana's current procedures for the levying and collection of property taxes.

LEVIES AND COLLECTION

Property Tax Levies

Montana, like most other states, begins the local budgeting process with a determination of the value of property within the boundaries of local taxing jurisdictions. Following this determination, taxable rates are applied to the various classes of property, resulting in a taxable valuation for each parcel or piece of property and for the jurisdiction as a whole. This process is usually completed in June of each year.

Toward the end of the valuation determination process, county, city, and school budgets begin to be developed for the ensuing fiscal year. Once established, the budgets are totalled to provide a figure representing the revenue needs of the taxing entities. The total amount of revenue needed is divided by the total amount

⁸ The First Legislative Assembly never organized and passed no laws of any kind.

of taxable valuation in the jurisdiction, resulting in a levy, expressed in mills, to be assessed against the taxable value of all property within the jurisdiction.

Property Tax Payments

Once assessments on real property and improvements are completed for each taxpayer in the county, the county treasurer sends a notice of taxes due. Under Montana law, taxes are payable as follows: one-half of the amount of the tax is payable on or before 5 p.m. on November 30 and one-half on or before 5 p.m. on May 31 of each year. (15-16-102, MCA.)

If the taxes due are not paid on or before 5 p.m. on November 30 and on or before 5 p.m. on May 31 of each year, the taxes are considered delinquent and draw interest at the rate of 5/6 of 1% per month from the time of the delinquency and a 2% penalty. (15-16-101, 15-16-102, MCA.)

DELINQUENCIES

Reporting Delinquencies

In December and June of each year, after first-half and second-half payments are due, the county treasurer is required to report delinquencies to the county clerk and recorder. The report must list "all persons and property then owing taxes". (15-6-301, MCA.)

Upon receipt of the delinquent list, the clerk and recorder is required to "foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book and must require from him an immediate account for any existing deficiency". (15-16-302, MCA.)

The county clerk and recorder is then required to charge the county treasurer with the amount of taxes due on the delinquent list. (15-16-303, MCA.)

On the third Monday in February of each year, the treasurer must make an affidavit that all unpaid taxes have truly not been paid, and that "he has not been

able to discover any property belonging to or in possession of the persons liable to pay" the tax. (15-16-305, MCA.)

It is the duty of the Department of Revenue (DOR) or the assessor acting as the department's agent to report the discovery of all personal property to the county treasurer within 5 days of discovery. The DOR's agent must assess the property and report the amount due and "the names of each person owning, claiming, or possessing such personal property" to the treasurer. (15-16-111, MCA.)

Upon receipt of the report on personal property, the treasurer must notify the owner that taxes are due on the property. Section 15-16-113, MCA, states, in part:

The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. . . .

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

Delinquencies Are a Lien

Under Title 15, chapter 16, part 4, MCA, all tax delinquencies become a lien on the delinquent taxpayer's property.

Section 15-16-401, MCA, states that every tax has the effect of a judgment against the person owing the tax, that the tax creates a lien against any property on which property tax has not been paid, and that the county treasurer has the authority to sell the property in satisfaction of any delinquency.

Section 15-16-402, MCA, establishes a lien on real property owned by a person delinquent on personal property taxes. Delinquent taxes on realty is a lien against the property, and delinquent taxes on improvements assessed to other than the landowner become a lien on the land, attaching January 1 in each year. (15-16-403, MCA.)

Finally, the county has a lien on any money in its possession belonging to any taxpayer delinquent on personal property that is not a lien on real estate owned by the taxpayer. (15-16-404, MCA.)

The county treasurer must annually prepare a list of delinquent taxes on personal property that are not a lien on real property and that have been delinquent for 10 years or more. The list must be delivered to the county commissioners who are required, within 30 days of receipt of the list, to cancel the delinquencies. (15-16-701, MCA.)

Collection of Delinquencies

The collection of delinquencies was the real core of the issue that was to be studied under SJR 14. The procedure for the collection of delinquencies on personal property is clearly stated in 15-16-113, MCA, above; consequently, the remaining discussion will not include delinquencies on personal property.

Perhaps because confiscating real property for delinquent taxes is viewed as more drastic than selling personalty for the same reason, the procedure for collecting delinquencies on real property and improvements is much more involved and time-consuming. The procedure is also subject to interpretation by the county treasurer, the county clerk and recorder, the county sheriff, and the board of county commissioners.

The following is a brief description of the procedure for the sale of real property for delinquent taxes.

TAX SALES

Tax Sales for Delinquencies

On the third Monday in June, the county treasurer must publish notice that a tax sale will take place at a specific time and place. The sale must occur not less than 21 days nor more than 28 days from the first publication. The sale must take place in front of the county treasurer's office.

Following publication of the notice, the county treasurer must file with the county clerk and recorder a copy of the publication and an affidavit:

1. that the copy is a true copy of the publication;
2. that the publication was made in a newspaper, and the name of the newspaper, place of publication, and date of each appearance of the notice; and
3. if no newspaper is published in the county, that notices were posted in three public places, and designating the places.

(NOTE: Subsequent to notice being published but before the actual sale, delinquent taxpayers may protest the delinquency, which protest results in a series of other actions by county officials. A delinquent taxpayer may also designate a portion of the property to be sold if less than the entire property.)

Upon sale of the property for delinquent taxes, the treasurer must prepare a certificate containing:

1. the date of the sale;
2. the name of the person assessed;
3. a description of the land sold;
4. the amount paid for the land described;
5. that the described land was sold for taxes;
6. the year of the (delinquent) assessment; and
7. the time at which the purchaser will be entitled to a tax deed (assuming the sale is not redeemed).

This certificate must be filed with the county clerk and recorder and a duplicate given to the purchaser. The certificate represents a lien on the property for the amount of delinquent tax, including penalties, interest, and accrued costs. Upon receipt of the certificate, the clerk and recorder must file it and enter it into a book. The treasurer must also enter the information contained in the certificate in a book.

If there is no purchaser of the property, the taxes are struck off to the county as purchaser. The county may assign its interest in the property to any person who pays:

1. the amount for which the property was bid;
2. interest at 5/6 of 1% per month from the time the county became purchaser; and
3. the amount of all subsequent delinquent taxes, penalties, costs, and interest.

If an assignment is made, the county treasurer must prepare a certificate containing substantially the same information as is required for the certificate issued at the tax sale. The treasurer does not record the assignment otherwise, nor does the county clerk and recorder.

Following the tax sale, and assignment if made, the property is assessed as it would have been without delinquency. It is regularly assessed every year thereafter as well.

If the lien on the property is not redeemed, discretion to hold subsequent tax sales on the property lies with the board of county commissioners.

REDEMPTION

Redemption of Property Sold at Tax Sale

Redemption of property sold for taxes may be made by the true owner or any party having any interest in or lien upon the property within 36 months from the date of purchase, or at any time prior to the notice of and application for a tax deed.

If the property is not redeemed in the time allowed, the county treasurer must make a deed of the property to the purchaser or his assignee, but only after proper notice and application.

ACQUIRING A TAX DEED

Tax Deed by Purchase, Notice, Application, and Judgment

In applying for a tax deed, the purchaser must serve upon:

1. the owner of the property purchased, if known;
2. any purchaser of the property under contract for deed, if known;
3. the persons occupying the property; and
4. any mortgagee or mortgagees named in any mortgage;

a written notice stating that said property has been sold for delinquent taxes. The notice must include, in effect, all of the information included on the tax sale certificate issued at the time of purchase.

The true owner, mortgagee, or assignee has the right of redemption indefinitely until such notice has been given and the deed applied for. Application for a tax deed includes the payment of all fees, percentages, penalties, and costs required by law.

If the county remains the purchaser without assignment, a tax deed may be noticed and applied for the same as if the property were purchased by a private party or assignee. The board of county commissioners may not be compelled, however, to seek a tax deed until 3 years following the expiration of the redemption period.

A tax deed may not be issued to any purchaser until proof of notice of application for tax deed (by affidavit) has been filed with the county clerk and recorder.

Tax Deed by Action

As an alternative to gaining a tax deed through notice and application, the purchaser of property sold for delinquent taxes may bring an action in district court to obtain a tax deed. If other than the county, the plaintiff must pay all delinquent taxes assessed subsequent to the date he procured the certificate of sale.

An action for tax deed begins by the filing of a complaint with the purchaser named as the plaintiff and the county treasurer and every owner and person with an interest in the property named as defendants.

If the county is the plaintiff, the action must be filed in the name of the county clerk and recorder.

At the time the complaint is filed, a notice of the pendency of the action must be recorded in the county clerk and recorder's office, and must also be filed with the clerk of court as part of the judicial record.

The complaint must be given to the defendant, issued as a summons in manner, form, and substance as in civil actions. Service of the summons must be made as in civil actions as well.

Any defendant may appear within the time allowed for appearances in civil actions and defend the action. The defense may include questions to the legality, validity, or sufficiency of any act had in connection with the assessment or sale of the land.

Any defendant may also redeem the land from the tax sale by paying all delinquent taxes, penalties, interest, and costs of the action. When paid, the county treasurer must issue a certificate of redemption.

In an action for tax deed, no judgment will be given by default. The court must require proof of the facts alleged in the complain and other pleadings in the action. After a judgment is entered in favor of the plaintiff, the defendants have no further claim to the land or improvements described in the complaint.

A deed issued under an action for deed conveys to the grantees absolute title to the property described in the deed. Any lien for taxes or special improvements, including irrigation and drainage assessments, remains an encumbrance and is not satisfied until paid.

Quiet Title on Tax Deed

Subsequent to the conveyance of a tax deed, a person claiming true ownership of or interest in the property described in the tax deed may bring an action to set aside or annul the tax deed, or to quiet title.

In this kind of an action, the person claiming a right in the property must deposit with the court:

1. the amount of all taxes, interest, and penalties which would have accrued if the property had been regularly assessed and was about to be redeemed; and
2. the amount of all sums paid by the purchaser after 3 years from the date of the tax sale expended for the purpose of preserving or improving the property.

The court may alternatively issue an order to the person claiming a right in the property to show cause why such payments should not be made. If a show cause order is issued, a hearing must be scheduled at a time not exceeding 30 days from the date of the order.

At the show cause hearing, the court is required to establish the amount to be deposited with the court. If the amount is not deposited with the court in the time allowed in the order, the person claiming a right in the property is deemed to have waived any defect in the tax proceeding and any right of redemption. The court must also enter a decree quieting the title of the purchaser against the person claiming a right in the property.

If the person claiming a right in the property pays the amount to the court and is successful in the action, the amount is paid to the purchaser. If the claimant is not successful, the amount is returned to him.

Any deed executed more than 3 years after any tax sale conveys to the grantee the absolute title to the lands described in the deed.

The grantee of a tax deed issued more than 3 years and 30 days after the tax sale may publish a "notice of claim of a tax title". The notice must contain all the information necessary to redeem the property, the name of the person claiming the tax deed, and the name of the person in whose name the property was assessed. The notice must also demand that the person to whom the property was assessed (i.e., the original owner) within 30 days pay to the person holding the tax deed the amount of all taxes, interest, and penalties.

If the person to whom the property was assessed does not pay, within 30 days of the first publication of the notice, to the person holding the tax deed the amount stated in the notice, the tax deed is valid and binding.

SUMMARY OF HISTORIC TAX DEEDING PROCESS

The sale of property for delinquent taxes is, understandably and necessarily, a last resort for the collection of property taxes. While the process for the sale of personality appears to be quick and uncomplicated, the procedure for the sale of realty is complicated, time-consuming, and open to interpretation and, therefore, inconsistency.

The statutes governing the sale of property for delinquent taxes are some of the oldest in the Montana Code Annotated; most date back to the 1890's.⁹ Age alone does not antiquate or invalidate a law or a procedure -- but cumbersome procedures, ambiguity, and inconsistency could.

The charge of the Revenue Oversight Committee in SJR 14 was to examine Montana's procedures for the sale of property for delinquent taxes and "the establishment of uniform and equitable procedures and safeguards for the public and private sectors in the taking and disposal of real and personal property for taxes".

The committee met that charge by drafting and recommending to the Legislature LC 288, later to be introduced as Senate Bill No. 162, in the 50th legislative session. A copy of the bill as recommended by the committee and as introduced is contained herein as Appendix A, following Chapter Five. A summary of the bill, as finally adopted, follows in Chapter Five. (See also, Chapter 587, Laws of 1987.)

⁹ In fact, the principal statute authorizing quiet title actions, 70-28-101, MCA, dates back to Montana's early years as a territory. See sec. 233, p. 92, Bannack Statutes; sec. 254, p. 188, Laws of 1867.

CHAPTER FIVE

A SUMMARY OF SENATE BILL NO. 162

An Act Generally Revising the Laws Relating to Property Tax Collections, Delinquencies, and the Tax Deeding Process

BACKGROUND

Senate Joint Resolution 14, adopted by the 50th Legislature in regular session, required the Legislature's Revenue Oversight Committee to undertake a study of, among other things:

. . . the establishment of uniform and equitable procedures and safeguards for the public and private sectors in the taking and disposal of real and personal property for taxes.

In this effort, the committee directed its staff to work with local elected officials directly involved with the collection of property taxes, property tax delinquencies, tax sales, and tax deeds.

A working group was formed that was comprised of several Montana county treasurers and clerks and recorders, representatives of the cities and towns, and a representative of the Montana Taxpayers' Association.¹⁰ The group began its task by examining the property tax collection statutes of five other states: Washington, Oregon, Idaho, Arizona, and Ohio. It was the consensus of the working group that each of the other states' statutes had positive and negative elements, and that none of the states had an overall system that was significantly better than Montana's.

¹⁰ The members of the "working group" were: Dave Bohyer, Staff Researcher, Montana Legislative Council and the Revenue Oversight Committee; Jim Dopp, Records Manager for Missoula County and the Missoula County Clerk and Recorder; Sue Bartlett, Lewis and Clark County Clerk and Recorder; Sandra Whitney, Montana Taxpayers' Association; Gordon Morris, Montana Association of Counties; Susan Spurgeon, Fergus County Treasurer and Vice-President of the Montana County Treasurers' Association; Alec Hansen, Montana League of Cities and Towns; and Dick Michelotti, Cascade County Treasurer and President of the Montana County Treasurers' Association.

Consequently, the group agreed that a general revision of Montana's statutes was the most appropriate course of action.

Two of the group's primary goals were to make the property tax collection, delinquency, and tax deeding process more efficient, i.e., "streamlined", and to preserve as much as possible, existing Montana law and procedures.

The result of the general revision was embodied in LC 288, later introduced as Senate Bill No. 162. (See Appendix A.)

WHAT THE BILL DOES

SB 162 accomplishes the group's two primary goals by revising parts of Title 15, Chapter 16, MCA; repealing Chapters 17 and 18 of Title 15, MCA; and enacting 26 new code sections that provide a new procedure for tax sales and the tax deeding process.

Rewrites to Title 15, Chapter 16, were made for two reasons: (1) to comport with the new statutory language; and (2) to clarify the existing, confusing, and archaic language.

The provisions of Chapters 17 and 18 of Title 15 were repealed because the procedures contained therein created problems for taxpayers, persons legitimately seeking title to property through the tax deeding process, and numerous county officials including treasurers, clerks and recorders, sheriffs, county attorneys, and boards of county commissioners.

Under the repealed provisions of Title 15, Chapters 17 and 18, the tax sale process required the sale of an interest in property on which taxes were delinquent. Further, they guaranteed a 3-year redemption period during which any party with an interest in the property could "redeem" the delinquency. This process was maintained in SB 162, although the language in SB 162 detailing the process is more simply stated than the language in Chapters 17 and 18.

The process for actually taking a tax deed to property on which the taxes were delinquent was changed considerably.

Under the old process, any person other than the person to whom the taxes were actually assessed could purchase an interest in the property for the cost of the delinquent taxes, penalties, and interest. If no private party made such a purchase, the county became the "purchaser" by default. This "tax sale" process was preserved in SB 162.

A change in the "tax deeding" process occurred, however, when the 3-year redemption period expires.

Under the old process, the person who purchased an interest in the property had to make application to the county treasurer for a tax deed. Following application, rigorous notification procedures had to be followed so that all parties with an interest in the property had a "redemption" period, i.e., a sort of grace period during which the delinquency could be redeemed. In the perception of many county treasurers, county attorneys, and persons who have purchased an interest in property on which the taxes were delinquent, the process was so complicated that even if a tax deed were granted the tax deed was of little value because it could be easily voided on a technicality in a judicial proceeding.

The new process continues and protects two of the most important elements of the old process: the guaranteed 3-year redemption period and the rigorous procedure for notifying the true owner that he may be in jeopardy of losing his property through the tax deeding process. These two elements are of critical importance in protecting the rights of the true owner of the property.

In order to streamline the process, a change was made that resulted in increased efficiency, but which also produced policy implications of great importance. This change involves the way in which a tax deed is issued by the county treasurer.

As outlined above, the old process provided for an application procedure prior to the issuance of a tax deed. This caused problems for county treasurers and county clerks and recorders because no deed could be issued without the "purchaser" making application. In some instances, the purchaser would choose to not make application for several or even many years after the expiration of the 3-year redemption period. Consequently, county treasurers and county clerks had on their books and in their records, references to property tax delinquencies, tax sale

certificates, assignment certificates, and so forth, on property on which the taxes had been delinquent for 8, 10, 12 years, and more.

The new process guarantees the 3-year redemption period, then requires the county treasurer to: (1) notify all interested parties of pending issuance of a tax deed if the delinquency is not redeemed; and (2) issue a tax deed at the expiration of the 3-year redemption period if the delinquency is not redeemed prior to the expiration.

However, if the tax deed would be issued to the county, the treasurer may issue the deed only if directed to do so by the board of county commissioners.

What this means is that at the end of the 3-year redemption period a tax deed will automatically issue to the person (other than the person actually assessed for the taxes or the county) who purchases at a tax sale an interest in real property on which the taxes are delinquent. If no person purchases an interest in the property, the county becomes the purchaser and will take the tax deed if requested to do so by the county commissioners.

Summary of Revisions

- revisions to Title 15, Chapter 16, to comport with new code sections and new procedures, and to clarify and simplify archaic language
- revisions to other MCA sections to comport with new procedures
- continuance of the historical guarantee of a 3-year redemption period for redeeming delinquencies on real property taxes
- continuance of the historical guarantee of rigorous procedures for notifying all interested parties that their rights in property on which the taxes are or were delinquent may be in jeopardy by the pending issuance of a tax deed
- establishment of 26 new code sections establishing a streamlined process for property tax sales of real property and improvements, and a new and streamlined process for issuing tax deeds

POLICY IMPLICATIONS

Of the several policy implications resulting from adoption of SB 162, there is one that deserves special attention.

That is the provision that the "purchaser" of an interest in property for delinquent taxes other than a county, no longer will have the option of applying or not applying for a tax deed, but will automatically be issued a deed at the end of the 3-year redemption period. Counties still have the option of taking or not taking a tax deed.

Special consideration should be given to this change because the automatic issuing of a tax deed carries with it the responsibilities of owning the property. This is most vividly emphasized by focusing on the responsibilities associated with outstanding (or delinquent) assessments for special improvement districts (SIDs) or rural special improvement districts (RSIDs).

A person or governmental entity taking a tax deed on property on which the SIDs are delinquent will be responsible for the delinquency and for all future assessments. In some instances, the amount of the SIDs could be greater than the amount of the delinquent taxes.

For governmental entities, especially counties, the situation is compounded because of the sheer number of delinquencies and potential number of properties that might be acquired by tax deed. Any outstanding delinquent SIDs or RSIDs would have to be paid by the county.¹¹

¹¹ As currently written, the county is already obligated for delinquent SIDs and RSIDs through the revolving fund established for delinquencies. Consequently, the fact that the county will eventually be required to pay for any delinquency is not changed, but merely made more evident. And, of course, with the automatic issuance of a tax deed at the end of the 3-year redemption period, counties will no longer be afforded the option of not becoming the owner of such delinquent property.

SUMMARY

SB 162 accomplishes the legislative mandate stated in SJR 14 by providing

. . . uniform and equitable procedures and safeguards for the public and private sectors in the taking and disposal of real and personal property for taxes.

Outdated and unclear language and procedures are repealed and new language is adopted that is simpler to understand and more easily administered by county elected officials.

The property owner continues to be afforded the two most important protections currently available for the protection of his property interest:

- (1) the 3-year redemption period; and
- (2) rigorous procedures for notifying delinquent taxpayers and other interested parties that their property interests are in jeopardy and that a tax deed will be issued if the delinquency is not redeemed.

While the policy implications of SB 162 should not be underestimated, the new procedures contained in the bill replaced a confusing, inefficient, arguably unworkable, and very complicated process with a process that is still complex, but more efficient, more easily understandable, and more easily administered by Montana's local elected officials.

Senate BILL NO. 162

INTRODUCED BY Rep. [illegible]
BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PROPERTY TAX COLLECTIONS, PROPERTY TAX DELINQUENCIES, AND THE TAX DEEDING PROCESS; AMENDING SECTIONS 7-6-4414, 7-21-2102, 15-16-101, 15-16-102, 15-16-111 THROUGH 15-16-115, 15-16-117, 15-16-301 THROUGH 15-16-303, 15-16-305, 15-16-401, 15-16-402, 15-16-404, 15-16-504, 15-16-601, 15-16-701 THROUGH 15-16-704, 15-23-704, 15-24-302, 20-15-403, 76-13-211, 85-1-2152, 85-7-2154 THROUGH 85-7-2156, AND 85-7-2163, MCA; REPEALING SECTIONS 15-16-116, 15-16-501, 15-16-502, 15-16-505, 15-17-101, 15-17-102, 15-17-111 THROUGH 15-17-113, 15-17-201 THROUGH 15-17-208, 15-17-301 THROUGH 15-17-305, 15-17-311, 15-17-312, 15-17-901 THROUGH 15-17-903, 15-18-101 THROUGH 15-18-108, 15-18-201 THROUGH 15-18-205, 15-18-301 THROUGH 15-18-309, AND 15-18-401 THROUGH 15-18-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. Except as otherwise specifically provided, when terms mentioned in sections 1 through 261 are used in connection with

taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in [section 6].

(2) "County" means any county government and includes those classified as consolidated governments.

(3) "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

(4) "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser.

An assignee is a purchaser.

(5) "Tax," "taxes," or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

(6) "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on

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which the taxes are delinquent or other personal property on which the delinquent taxes are a lien.

NEW SECTION. Section 2. Notice of pending tax sale.

(1) The county treasurer shall publish or post a notice of pending tax sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that where the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax sale, the same will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

- (a) the name and address of the person to whom the delinquent taxes are assessed;
- (b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and
- (c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for three consecutive weeks in the newspaper designated for county printing as provided in 7-5-5-1. If 13) never have been published in the county, the notice must be posted by the county treasurer in one public places. The notice must be first published or posted or before the last Monday in June.

(4) Except as provided in section 5(2), the sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the county courthouse.

(6) Property on which take are delinquent are taxed which proper notification was not made may not be included in the current year's notice and sale. In the event of improper notification, the sale may be held on all property properly noticed.

NEW SECTION. Section 3. Copy of notice to be filed with county clerk -- affidavit. (1) Immediately following publication or posting of the notice required in [section] 2, the county treasurer shall file a copy of the notice with the county clerk. The copy must be accompanied by an affidavit signed by the county treasurer stating:

(a) the name of the newspaper and its address of publication; and

(b) the dates the notice was published;

1 (2) If no newspaper is published in the county, the
2 affidavit must list the locations and date of the posting
3 required by [section 2].

4 (3) The affidavit filed under subsection (1) or (2) is
5 prima facie evidence of all the facts stated therein.
6 **NEW SECTION.** Section 4. Irregular assessment. If the
7 county treasurer discovers, prior to the tax sale, that
8 property on which the taxes are delinquent has been
9 irregularly assessed, he may not offer the property or a
10 property tax lien for sale. In such event, the taxes on the
11 property must be listed on the assessment book as
12 uncollected for the year in which they were due, and they
13 must be assessed and collected during the succeeding year as
14 taxes are regularly assessed and collected.

15 **NEW SECTION.** Section 5. Conduct of tax sale. (1) On
16 the date and at the time and place specified in the notice,
17 the county treasurer shall, except as provided in [section
18 4], begin the tax sale of all property described in the list
19 required in [section 2(2)]. The tax sale must continue
20 until the county treasurer declares it over, but must
21 continue for a period of not less than 1 day. The treasurer
22 is not required to read the list but shall make a copy of
23 the list available for public inspection during regular
24 business hours.

25 (2) The treasurer may postpone the day of commencing

1 the sale on a day-to-day basis without publishing a new
2 notice, provided that the sale is held within 3 weeks from
3 the day first fixed.

4 (3) Property assessed under [section 12] that has not
5 been sold to a purchaser other than the County may, at the
6 discretion of the county treasurer, be offered for sale at
7 tax sales subsequent to the sale at which it was first
8 offered.

9 **NEW SECTION.** Section 6. Tax sale certificate. (1)
10 Upon receipt of all delinquent taxes, penalties, interest,
11 and costs, the county treasurer shall prepare a tax sale
12 certificate that must contain:
13 (a) the date on which the property taxes became
14 delinquent;
15 (b) the date on which a property tax lien was sold at
16 a tax sale;
17 (c) the name and address of record of the person to
18 whom the taxes were assessed;
19 (d) a description of the property on which the taxes
20 were assessed;
21 (e) the name and mailing address of the purchaser;
22 (f) the amount paid to liquidate the delinquency,
23 including a separate listing of the amount of the delinquent
24 taxes, penalties, interest, and costs;
25 (g) a statement that the certificate represents a lien

on the property that may lead to the issuance of a tax deed
for the property;

(b) a statement specifying the date on which the
borrower shall be entitled to a tax deed; and

(c) an identification number corresponding to the tax
date certificate number recorded by the county treasurer as
required in section 7.

(2) The certificate must be signed by the county
treasurer and delivered to the purchaser. A copy of the
certificate must be filed by the treasurer in the office of
the county clerk.

NEW SECTION. Section 7. Treasurer to record tax
sales. Prior to delivering the tax sale certificate to the
purchaser, the county treasurer shall make a record of the
tax sale. The record must include:

(1) the name and address of the purchaser;

(2) the date on which the tax lien was purchased;

(3) a description of the property on which the
certificate is a lien, which description must correspond to
the description listed on the certificate;

(4) the amount paid to liquidate the delinquency,
including a separate listing of the amount of the delinquent
taxes, penalties, interest, and costs; and

(5) a number identifying the tax sale certificate
issued upon payment of the delinquency.

NEW SECTION. Section 8. County as purchaser
of delinquent taxes.

Delinquent penalties levied on the delinquent taxes
shall be collected by the county treasurer from the
purchaser.

(2) (a) After the date of the first payment of
the tax sale, the county treasurer shall record in the
all property that is subject to the tax sale. He shall also
record that the county is the purchaser of all property
remaining uncollected upon which the tax remains delinquent.

(b) The record of the property in which the county is
listed as the purchaser may be made in the usual manner
separate from the certificate of each property.
Reference to the property as recorded in the list required
under 15-16-301.

(3) A property tax lien of the county in any property
acquired by the county under subsection (1) must be assigned
by the county treasurer as provided in section 11; under the
payment of all delinquent taxes, including penalty
interest, and costs specified in section 11.

NEW SECTION. Section 9. Resale for nonpayment. (1) If

a purchaser other than the county does not pay the
delinquent taxes, including penalties, interest, and costs,
before 10 a.m. on the next business day following the day
of purchase at a tax sale, the property must be made

available for sale for the amount of the delinquent taxes,
including penalties, interest, and costs, on the following
business day of the sale, except as provided in subsection
(2).

(2) If the sale was made on the last day of the tax
sale and payment was not received as provided in subsection
(1), the county is considered to be the purchaser as
provided in section 8.

NEW SECTION. Section 10. Disposition of money from
tax sale. All money received from purchasers for delinquent
taxes, penalties, interest, and costs must be deposited in
the county treasury. The money received, other than costs,
must be credited to the various funds to which the taxes
would have originally been distributed and in the same
proportion as the taxes would have originally been
distributed. Any money received for costs or any money
remaining after crediting the separate funds must be
deposited to the credit of the county general fund.

NEW SECTION. Section 11. Assignment of rights --

(1) Any tax sale certificate or other official record
form in which the county is listed as the purchaser must be
assigned by the county treasurer to any person who pays to
the county the amount of the delinquent taxes, including
penalties, interest, and costs, accruing from the date of
delinquency.

(2) The assignment made under subsection (1) must be
in the form of an assignment certificate in substantially
the following form:

I, ..., the treasurer of ..., County, state of Montana, hereby certify that a tax sale for tax year 19... in the county of ..., was held on (date). For the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property: (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by section 8, MCA. As of the date of this certificate, the delinquency, including the having been no liquidation of the delinquency or penalties, interest, and costs amounting to \$..., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

There having been no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ..., state of Montana, acquired in such property by virtue of the sale to (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal at office ..., on the day of ..., 19... .

..... County Treasurer
..... County
(3) An assignment made by a purchaser other than the
County, by an assignee of the County, or by a previous
assignee may be made for any consideration whatsoever. An
assignment so made is legal and binding only upon filing
with the county treasurer a statement that the purchaser's
other assignee's interest in the property has been
assigned. The statement must contain:
(a) the name and address of the new assignee;
(b) the name and address of the original purchaser of
the tax sale certificate;
(c) the name and address of each previous assignee, if
any;
(d) a description of the property upon which the
property tax lien was issued, which description must contain
the same information as contained in the tax sale
certificate or assignment certificate, as appropriate;

(e) the signature of the party, be it purchaser or
assignee, making the assignment;

(f) the signature of the new assignee, and
(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or
the statement described in subsection (3) is lost or
destroyed, the county treasurer shall, upon adequate proof

and signed affidavit by the assignee that loss or
destruction has occurred, issue a duplicate certificate
to the assignee.
by the provisions of this section, a tax sale certificate
of land for which a tax surfer's debt was satisfied or
before March 5, 1917, or for which a tax warrant was issued
before the effective date of this act, and the
holder of any certificate described in subsection (1) has
the same rights, powers, and privileges with regard to
securing a deed as any purchaser of land at a tax sale may
now have.
NEW SECTION. Section 12. Assessment of property sold
at tax sale. (1) The assessment of property on which a tax
sale certificate has been issued or for which the county is
listed as the purchaser is provided in [section 8] continues
in the same manner as other property is assessed.
(2) If any assessed taxes are not paid when due, they
are delinquent.
NEW SECTION. Section 13. Sale not voided by misnomer
of ownership. When a tax sale certificate is acquired as
provided in [section 6] or when the county is listed as the
purchaser as provided in [section 8] and the taxes were
properly assessed on the property of a particular person, no
misnomer of ownership or other mistake relating to ownership
affects the sale or renders it void or voidable.

1 **NEW SECTION.** Section 14. Voided sale -- refund --
2 limitation on action for royalty interest. (1) If a tax sale
3 held under the provisions of [sections 1 through 15] is
4 declared void by a court for irregularity in the assessment,
5 levy, or sale, the money paid by the purchaser at the sale
6 or by any assignee must be refunded, with interest at the
7 rate payable upon delinquencies as provided in 15-16-102
8 from the date of the payment, to the purchaser or owner of
9 the tax sale certificate, together with any penalty paid by
10 the purchaser.

65 (2) Following the payment of a refund as provided in
11 subsection (1), the county is considered the purchaser and
12 has a property tax lien upon the property for the legal
13 taxes on the property accruing from the date of delinquency,
14 plus penalties and interest as provided in 15-16-102. Any
15 money refunded that was received as provided in [section 6]
16 and distributed by the treasurer to the state or a city,
17 town, or district, respectively, must be charged to the
18 state, city, town, or district by the treasurer and deducted
19 from the next money due the state, city, town, or district,
20 respectively, on account of taxes paid or collected. A
21 purchaser of a property tax lien or owner thereof by
22 assignment where sales have been made by a city or town
23 which by resolution or ordinance collects its own taxes
24 instead of having the same collected by the county treasurer
25

1 must be reimbursed in similar manner and in similar
2 circumstances out of the city or town treasury upon order of
3 the mayor or, where applicable, the city manager or chairman
4 of the city commission. The city or town clerk or city or
5 town treasurer, as appropriate, shall make proper charges
6 and deductions against the respective funds of the city or
7 town upon the next collection of taxes by the city or town.
8 (3) The purchaser has a lien upon the property for the
9 amount of taxes, penalties, interest, and costs paid, with
10 the interest to be at the rate specified for delinquencies
11 in 15-16-102. If the purchaser is in possession of the
12 property and resides thereon, he may not be ejected from the
13 property until his lien has been liquidated.

14 (4) All affirmative defenses at law or equity,
15 including but not limited to estoppel, laches, and adverse
16 possession, may apply in a suit brought to challenge the
17 title to a royalty interest in land claimed to have been
18 acquired by a county by tax deed.

19 (5) An action against a county to recover a royalty
20 interest in land acquired by the county by tax deed must be
21 brought within the period prescribed in 21-2-210.

22 **NEW SECTION.** Section 15. Sale of personality for
23 delinquent taxes -- fee -- disposition of proceeds -- unsold
24 property. (1) The tax on personal property may be collected
25 and payment enforced by the seizure and sale of any personal

1 property in the possession of the person assessed. Seizure
2 and sale are authorized at any time after the date the taxes
3 become delinquent or by the institution of a civil action
4 for its collection in any court of competent jurisdiction.
5 A result, no one method does not bar the right to resort to
6 any other method. Any of the methods provided may be used
7 until the full amount of the taxes is collected.

8 (2) The provisions of 15-16-113 and this section apply
9 to a seizure and sale under subsection (1).
10 (3) A sale under subsection (1) must be at public
11 auction. The minimum bid for any property offered for sale
12 must be of a sufficient amount to pay the delinquent taxes,
13 including penalties, interest, and costs.

14 (4) For seizing and selling personal property, the
15 treasurer shall charge \$25, plus the mileage allowance
16 provided by law to the sheriff, plus reasonable expenses for
17 seizing, handling, keeping, or caring for any property so
18 seized. The charge and other costs may only be charged when
19 property is actually seized and offered for sale or sold.
20 (5) On payment of the price bid for any property sold
21 as provided in this section, delivery of the property, with
22 a bill of sale, vests the title of the property in the
23 purchaser.

24 (6) (a) All money collected from the sale of property
25 in liquidation of the delinquency, including delinquent

i taxes, penalties, and interest, but not costs, must be
2 credited by the treasurer to the appropriate funds.
3 (b) Any money collected in excess of the delinquent
4 tax penalties and interest must be turned to the person
5 owning the property prior to the sale, if known. If the
6 person doesn't claim the excess immediately following the
7 sale, the treasurer shall deposit the money in the county
8 treasury for a period of 1 year from the date of sale. If
9 the person has not claimed the excess within 1 year from the
10 date of sale, the county treasurer shall deposit the amount
11 in the county general fund and the person have no claim to it
12 thereafter.

13 (7) Any property seized for the purpose of liquidating
14 a delinquency by a tax sale that remains unsold following a
15 sale may be left at the place of sale at the risk of the
16 owner.

17 NEW SECTION. Section 16. Time for redemption —
18 Interested party. (1) Redemption of a property tax lien
19 acquired at a tax sale or otherwise may be made by the
20 owner, the holder of an unrecorded or improperly recorded
21 security interest, the occupant of the property, or any
22 interested party within 36 months from the date of the first
23 day of the tax sale or within 60 days following the giving
24 of the notice required in section 21, whichever is later.
25 (2) For the purposes of sections 16 through 26, an

"interested party" includes a mortgagee, holder of a contract for deed, lienholder, or other person who has a properly perfected security interest in the property duly recorded with the county clerk. A person having an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of [sections 16 through 26].

NEW SECTION. Section 17. Redemption from property tax lien. In all cases where a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property. Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes paid by the purchaser with interest thereon, at the rate established for delinquent taxes in 15-16-102, from the date of the payment of the taxes, penalties, interest, and costs.

NEW SECTION. Section 18. Treasurer to record redemptions. Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or his agent to the county treasurer and refunded to the person listed as purchaser as provided in [section 6(1)(e)], [section 7], or [section 8] or distributed as provided in [section 19], the word

"redeemed", the date, and the name of the redemptioner must be marked on the tax sale certificate or in the record required in [section 8] by the county treasurer.

NEW SECTION. Section 19. Distribution of redemption proceeds. (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not the costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer.

(b) (i) The distribution must be made by certified mail by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in [section 6(1)(e)].

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

1 (A) the county treasurer is in possession of money
2 belonging to the purchaser for the redemption of the
3 delinquency on the property named in the tax sale
4 certificate;

5 (B) the money will be held by the county treasurer for
6 a period of 1 year from the date of publication; and
7 (C) if the money is not claimed by the purchaser
8 within the 1-year period, the purchaser relinquishes all
9 claim to the money and the money will be credited to the
10 county general fund.

11 (3) The publication required in subsection (2)(b)(ii)
12 must be made at least annually, but the 1-year period
13 described in subsection (2)(b)(ii)(B) may not begin until
14 the date of publication.

15 (4) The county treasurer shall keep an accurate
16 account of all money paid in redemption, including a
17 separate accounting of other delinquent taxes, interest,
18 penalties, and costs, and when and to whom distributed.

19 ~~NEW SECTION.~~ Section 20. Tax deed -- fee. (1) Except
20 as provided in subsection (3), if the property tax lien is
21 not redeemed in the time allowed under [section 16], the
22 county treasurer shall grant the purchaser a tax deed for
23 the property. The deed must contain the same information as
24 is required in a tax sale certificate under [section 6],
25 except the description of the property must be the full

1 legal description, and a statement that the property tax
2 lien was not redeemed during the redemption period provided
3 in [section 16].

4 (2) (a) Except as provided in subsection (3)(b), the
5 county treasurer shall charge the purchaser \$25 plus all
6 actual costs incurred by the county in giving the notice of
7 assisting another purchaser or anyone in giving the notice
8 required in section 21 for making the deed, which fee must
9 be deposited in the county general fund.
10 (b) If the purchaser is the county, no fee may be
11 charged for making the deed.
12 (c) Reasonable costs incurred by the county in
13 searching the county records to identify persons entitled to
14 notice are considered part of the actual costs of the notice
15 provided in subsection (2)(a).

16 (3) If the purchaser is the county and no assignment
17 has been made, the county treasurer may not issue a tax deed
18 to the county unless the board of county commissioners, by
19 resolution, directs him to issue a tax deed.
20 (4) Deeds issued to purchasers must be recorded by the
21 county clerk as provided in Title 7, chapter 4, part 26,
22 except that when the county is the purchaser and subsequent
23 tax deed holder, the county clerk may not charge a fee for
24 recording the deed.

25 NEW SECTION. Section 21. Notice -- proof of notice --

penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in [section 16], a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county, or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) If the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1), but the board of county commissioners at a time subsequent to the period described

in subsection (1) does direct the county treasurer to issue a tax deed, the county treasurer must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall proceed to give notice in the manner provided in subsection (1)(a).

(b) Notice given under this subsection (3) must be given not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of \$500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).

(4) The notice required under subsections (1) through

1 (3) must be made by certified mail to each interested party
2 and the current occupant, if any, of the property. The
3 address to which the notice must be sent is: for each
4 interested party, the address disclosed by the records in:
5 the office of the county clerk and, for the occupant, the
6 street address or other known address of the subject
7 property.

8 (5) In all cases in which the address of an interested
9 party is not known, the county clerk shall, within the
10 period described in subsection (1), or not less than 60 days
11 or more than 90 days prior to the date upon which the county
12 treasurer will otherwise issue a tax deed, whichever is
13 appropriate, publish once a week for 2 successive weeks in
14 the official newspaper of the county or such other newspaper
15 as the board of county commissioners may by resolution
16 designate, a notice containing the information contained in
17 subsection (6), plus:
18 (a) the name of the interested party, for whom the
19 address is unknown;

20 (b) a statement that the address of the interested
21 party is unknown;
22 (c) a statement that the published notice meets the
23 legal requirements for notice of a pending tax deed
24 issuance; and
25 (d) a statement that the interested party's rights in

1 the property may be in jeopardy.
2 (6) The notices required by subsections (1) through
3 (3) and (5) must contain the following:
4 (a) a statement that a property tax lien exists on the
5 property as a result of a property tax delinquency;
6 (b) a description of the property on which the taxes
7 are or were delinquent, which description must be the same
8 as the description of the property on the tax sale
9 certificate or in the record described in [section 8(2)(b)];
10 (c) the date that the property taxes became
11 delinquent;

12 (d) the date that the property tax lien attached as
13 the result of a tax sale;
14 (e) the amount of taxes due, including penalties,
15 interest, and costs, as of the date of the notice of pending
16 tax deed issuance, which amount must include a separate
17 listing of the delinquent taxes, penalties, interest, and
18 costs that must be paid for the property tax lien to be
19 liquidated;

20 (f) the name and address of the purchaser;
21 (g) the name of the assignee if an assignment was made
22 as provided in [Section 11];
23 (h) the date that the redemption period expires or
24 expired;
25 (i) a statement that if all taxes, penalties,

interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) In all cases, proof of notice in whatever manner given must be filed by the county clerk, purchaser, or assignee, as appropriate, with the county clerk not less than 30 days following the mailing or publication of the notice. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification.

NEW SECTION. Section 22. Form of tax deed -- Prima facie evidence. (1) The form of a tax deed issued under the provisions of [sections 16 through 26], executed by a county treasurer, must be made in substance as follows:

This deed is made by (name of county treasurer), county treasurer of the county of (name of county), in the state of Montana, to (name of purchaser, his agent,

or assignee), as provided by the laws of the state of Montana;

Whereas, there was assessed for (year) the following real property: (description of the property); and Whereas, the taxes for (year) levied against the property amounted to \$....; and Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to (name of purchaser, his agent, or assignee) on (date, including year) for the sum of \$..., which amount included delinquent taxes in the amount of \$...., penalties in the amount of \$...., interest in the amount of \$..., and other costs in the amount of \$....; and Whereas, a tax sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and Whereas, not less than 60 days or more than 90 days prior to this date, notice was given to interested parties that the issuance of a tax deed was pending.

Now, therefore, I, (treasurer's name), county treasurer of the county of, in the state of Montana, in consideration of the sum of \$.... paid, hereby grant to (name of purchaser, his agent, or assignee) all the property situated in County, state of Montana, described herein above.

Witness my hand on this date (date, including

1 year).

2 County Treasurer

3 County

4 (2) A tax deed executed in substantially the form

5 provided in subsection (1) is prima facie evidence that:

6 (a) the property was assessed as required by law;

7 (b) the taxes were levied in accordance with law;

8 (c) the taxes were not paid when due;

9 (d) notice of tax sale was given and a property tax

10 lien was sold at the proper time and place as provided by

11 law;

12 (e) the property was not redeemed, and proper notice

13 of a pending tax deed issuance was made as required by law;

14 (f) the person who executed the deed was legally

15 authorized to do so; and

16 (g) if the real property was sold to pay delinquent

17 taxes on personal property, the real property belonged to

18 the person liable to pay the personal property tax.

19 NEW SECTION. Section 23. Effect of deed. (1) A deed

20 issued under [sections 16 through 26] conveys to the grantee

21 absolute title to the property described therein as of the

22 date of the expiration of the redemption period, free of all

23 encumbrances and clear of any and all claims, except:

24 (a) when the claim is payable after the execution of

25 the deed and:

1 (1) a property tax lien attaches subsequent to the tax

2 sale; or

3 (iii) a lien of any special, taxes, local improvement,

4 irrigation, or drainage assessment is levied against the

5 property;

6 (b) when the claim is an easement, right of way,

7 (c) when an interest in the land is owned by the

8 United States, this state, or a subdivision of either;

9 (2) Under the conditions described in subsection (4),

10 the deed is prima facie evidence of the right of possession

11 accrued as of the date of expiration of the period of

12 redemption or the date upon which a tax deed was otherwise

13 issued.

14 NEW SECTION. Section 24. Assignment of quiet title to tax

15 deed -- notice. (1) (a) In an action brought to set aside or

16 annul any tax deed or to determine the rights of a purchaser

17 to real property claimed to have been acquired through tax

18 proceedings or a tax sale, the purchaser, upon filing an

19 affidavit, may obtain from the court an order directed to

20 the person claiming to:

21 (i) own the property;

22 (ii) have any interest in or lien upon the property;

23 (iii) have a right to redeem the property; or

24 (iv) have rights hostile to the tax title.

25 (b) The person described in subsections (1)(a)(i)

1 through (1)(a)(iv) is hereafter referred to as the true
2 owner.
3 (c) The order described in subsection (1)(a) may
4 command the true owner to:
5 (ii) deposit with the court for the use of the
6 purchaser:

7 (A) the amount of all taxes, interest, penalties, and
8 costs that would have accrued if the property had been
9 regularly and legally assessed and taxed as the property of
10 the true owner and was about to be redeemed by the true
11 owner; and

12 (B) the amount of all sums reasonably paid by the
13 purchaser following the order and after 3 years from the
14 date of the tax sale to preserve the property or to make
15 improvements thereon while in the purchaser's possession, as
16 the total amount of the taxes, interest, penalties, costs,
17 and improvements is alleged by the plaintiff and as must
18 appear in the order; or

19 (iii) show cause on a date to be fixed in the order, not
20 exceeding 30 days from the date of the order, why such
21 payment should not be made.

22 (2) The affidavit must list the name and address of
23 the true owner and whether he is in the state of Montana, if
24 known to the plaintiff, or state that the address of the
25 true owner is not known to the plaintiff.

1 (3) (a) The order must be filed with the county clerk
2 and a copy served personally upon each person shown in the
3 affidavit claiming to be a true owner and who is, at that
4 time, known to be in the state of Montana.
5 (b) Jurisdiction is acquired over all other persons
6 by:
7 (i) publishing the order once in the official
8 newspaper of the county;
9 (ii) posting the order in three public places in the
10 county at least 10 days prior to the hearing; and
11 (iii) giving a copy to the county treasurer.

12 NEW SECTION. Section 25. Procedure in tax deed quiet
13 title action.

14 (1) Upon the hearing of the order to show
15 cause, the court has jurisdiction to determine the amount to
16 be deposited and to make an order that the same be paid to
17 the court within a period not exceeding 30 days after the
18 order is made.

19 (2) (a) Except as provided in subsection (2)(b), if
20 the amount is not paid within the time fixed by the court,
21 the true owner is considered to have waived any defects in
22 the tax proceedings and any right of redemption. In the
23 event of waiver, the true owner has no claim of any kind
24 against the state or purchaser and a decree must be entered
25 in the action quieting the title of the purchaser as against
the true owner.

1 (b) The proceedings are void if the taxes were not
2 delinquent or have been paid.

3 (3) If payment is made to the court and the true owner
4 is successful in the action, all the tax proceedings are
5 declared void, the amount defendant within the court must be
6 paid to the purchaser.

7 (4) If the purported true owner is unsuccessful in
8 the action and the title of the purchaser is sustained, the
9 money must be returned to the purported true owner.
10 (5) In any action brought by a purchaser to quiet
11 title, several tracts of land, whether contiguous or
12 noncontiguous or owned by different defendants, may be set
13 forth in one complaint. All persons claiming any title to,
14 interest in, or lien upon any of the premises or any part
15 thereof may be joined as defendants, even though their
16 claims are independent, are not in common, and do not cover
17 the same tracts. The procedure in such an action must
18 follow, as nearly as practicable, the procedure specified in
19 70-28-101 through 70-28-109.

20 (6) In the final judgment, the court shall also
21 determine the rights resulting from any additional taxes on
22 the property accruing or being paid by either party during
23 the pendency of the suit.

24 (7) In the quiet title action, the court has complete
25 jurisdiction to fix the amount of taxes that should have

1 been paid, including penalties, interest, and costs, and to
2 determine all questions necessary in granting full relief:
3 including the power to order a city assessor or the tax
4 officer to make and verify to the court a certificate of the
5 assessments or to do any other as necessary to enable the
6 court to do complete justice. Error may be reviewed
7 appeal from the final judgment.

8 NEW SECTION. Section 26. Title conveyed by deed
9 defects. (1) A tax deed executed more than 3 years after the
10 applicable tax sale conveys to the grantee all the title to
11 the property described in the deed as of 3 years following
12 the date of sale if the property interests in the tax deed; or
13 (2) The conveyance includes:
14 (a) all right, title, interest, estate, claim, claim
15 and demand of the state of Montana and of the county in and
16 to the property; and
17 (b) the right, if the tax deed, tax sale or any of
18 the tax proceedings upon which the deed may be based are
19 attacked and held irregular or void, to recover the unpaid
20 taxes, interest, penalties, and costs that would accrue if
21 the tax proceedings had been regular and it was desired to
22 redeem the property.

23 (3) The tax deed is free of all encumbrances except as
24 provided in subsections (1)(a) through (1)(c) of section
25 231.

(4) A tax deed is prima facie evidence of the right of possession accruing as of the date of the expiration of the redemption period described in [section 16].

(5) If any tax deed or deed purporting to be a tax deed is issued more than 3 years and 30 days after the date of the sale of the property interest at the applicable tax sale, the grantee may publish in the official newspaper of the county, once a week for 2 consecutive weeks, a notice entitled "Notice of Claim of a Tax Title". The notice must:

- (a) describe all property claimed to have been acquired by a tax deed;
- (b) contain an estimate of the amount due on the property for delinquent taxes, interest, penalties, and costs;
- (c) contain a statement that for further specific information, reference must be made to the records in the office of the county treasurer;

(d) list the name and address of record of the person in whose name the property was assessed or taxed; and

(e) contain a statement that demand is made that the person assessed or taxed must, within 30 days after the first publication of the notice, pay to the claimant or to the county treasurer for use by the claimant the amount of taxes, interest, penalties, and costs as the same appear in the records of the county treasurer or bring a suit to quiet

the true owner's title or to set aside the tax deed.

(6) A mistake in the amount or in any name specified in the notice does not invalidate the notice.

(7) (a) If within the 30-day period the taxes, interest, penalties, and costs are not paid or a quiet title action is not brought, all defects in the tax proceedings and any right of redemption is considered waived. Except as provided in subsection (7)(b), after the 30-day period the title to the property described in the notice and in the tax deed is valid and binding, irrespective of any irregularities, defects, omissions, or total failure to observe any of the provisions of the laws of Montana regarding the assessment, levying of taxes, or sale of property for taxes and the giving of notices, whether or not such irregularities, defects, omissions, or failures could void the proceedings.

(b) The proceedings in subsection (7)(a) are void if the taxes were not delinquent or have been paid.

Section 27. Section 7-6-4414, MCA, is amended to read:

"7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising

provided by law.

- (2) All money received from sales and redemptions after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-18-108 [section 101.]
- Section 28. Section 7-21-204, MCA, is amended to read:
- "7-21-204. Lien arising from license. (1) All property held or used in any trade, occupation, or profession, for which a license is required by the provisions of this part is liable for such license and subject to a lien for the amount thereof. This lien is precede[re] of any other lien, claim, or demand.
- (2) If any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person and sell the same in the manner provided in 15-17-901--through--is 19-903 [section 15]."
- Section 29. Section 15-16-101, MCA, is amended to read:
- "15-16-101. Treasurer to publish notice -- manner of publication. (1) Within 10 days after the receipt of the assessment book, the county treasurer must publish a notice

specifying:

(a) that one half of all taxes levied and assessed will be due and payable before 5 P.M. on January 1st of each year or within 30 days after the first day of January, unless paid in full at the time the same will be delinquent and will incur interest at the rate of 1% per month for any late payment until paid and it will be added to the amount due;

(b) the amount of all taxes levied and assessed for the time the taxes will be delinquent; and will draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and it will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) He must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes and assessments due the current year and the amount due and delinquent for other years. The written notice shall include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

- (c) the value of each mill in that county;
- (d) itemized city services and special improvement district assessments collected by the county;
- (e) the number of the school district in which the property is located; and
- (f) the amount of the total tax due that is levied as tax, county tax, state tax, school district tax, and any other taxes.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under section (2)(d) ready for mailing.

(4) The notice in every case must be published once a week in some weekly or daily newspaper published in the county, if there is one, or if there is then by posting it in three public places. Pre-farmer are to publish or post notices does not relieve the owner of his liabilities. Any failure to give

Section 40. Section 15-16-102, MCA, is amended to
read:
": "15-16-102. Title for payment -- Penalty for
delinquency. All taxes levied and assessed in the State of Montana, except assessments made for special improvements, taxes and towns payable under 15-16-103 and assessments
will not affect the legality of the tax."

made on new production as provided in part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year, or within 30 days after the notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, or within 30 days after the notice is postedmarked, whichever is later, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after

such delinquency until paid and 21 shall be added to the
delinquent taxes as a penalty.
(4) If the taxes become delinquent, the count-
treasurer may not accept partial payment of the delinquent
taxes but may accept only the total amount of delinquent
taxes, including penalties, interest, and costs.
Section 31. Section 15-16-111, MCA, is amended
as follows:

read:

"15-16-111. Personal Property -- duty of department.
(1) It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same.
(2) Where such personal property is located in any city or town which shall have provided by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, the department also and at the same time shall furnish to send the city treasurer or town clerk a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the department or its agent must use the levy made during the previous year."

Section 32. Section 15-16-112, MCA, is amended to

read:

"15-16-112. Department report of personal property
assessment book. The department of revenue or its agent must note on the assessment book, opposite the names name of each person owning, claiming, or possessing such personal property which may-be-on is reported to the treasurer under 15-16-111, the fact that such the report was made to the treasurer and the date when the same report was so made."
Section 33. Section 15-16-113, MCA, is amended to read:
"15-16-113. Personal property -- duty of treasurer --
penalty. (1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the department of justice that the amount of such the tax is due and payable at the county treasurer's office.
(2) The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same

manner as property is sold on execution by the sheriff.

(3) The county treasurer may shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale under section as provided in [section 15].

(4) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

(5) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax."

Section 34. Section 15-16-14, MCA, is amended to read:

"15-16-14. Rate of taxation -- personal property. (1) All rates of tax levy set by the board of county commissioners on the second Monday in August of each year shall apply permanently to this class of personal property

during the ensuing tax year--and--the--

(2) The treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge.

(2) --if--the--rate--of--taxation--fixed--for--the--year--in which--the--collection--is--made--is--an--increase--over--the preceding--years--levy--then--the--said--board--of--county commissioners--may--direct--the--county--treasurer--to--collect--the amount--of--such--increased--levy--but--shall--not--be--obliged--to--do so--in--cases--where--in--the--opinion--of--the--board--the--cost--of collection--would--exceed--the--amount--of--such--increase--if--the rate--fixed--for--the--year--in--which--the--collection--is--made should--be--less--than--the--levy--for--the--preceding--year--then--the person--from--whom--such--excess--tax--was--collected--is--not--tie--with the--board--of--county--commissioners--a--duty--verified--claim--for a--refund--of--such--excess--tax--at--any--time--before--November--1--of the--year--in--which--such--an--excess--was--collected--and--such claim--shall--be--allowed--and--ordered--paid--by--the--board--of county--commissioners--to--the--amount--of--such--excess."

Section 35. Section 15-16-15, MCA, is amended to read:

"15-16-15. Treasurer's record of personal property taxes paid. (1) The treasurer--must--on or before December 1 of each year, the treasurer shall--set--in the assessment book, opposite the name of each person from whom

1 taxes have been collected by him in pursuance of such the
2 report of the assessor, the amount of taxes received and the
3 date of the receipt thereof or 2.
4 in case such if the taxes have not been collected
5 by him, the treasurer shall note in the assessment book the
6 reason why such collection was not made."

7 Section 36. Section 15-16-117, MCA, is amended to
8 read:

9 "15-16-117. Personal property -- treasurer's duty to
10 collect certain taxes on. (1) The county treasurer must
11 shall demand payment of poor taxes, authorized by 53-2-321,
12 and road taxes, authorized by 7-14-2206 or 7-14-2501 through
13 7-14-2504, of every person liable therefor whose name does
14 not appear on the assessment lists¹ and on the neglect
15 or refusal of any such person to pay the same, he must the
16 treasurer shall collect the taxes by seizure and sale of any
17 property owned by such the person.
18 (2) These taxes shall must be added upon the
19 assessment lists to other property taxes of persons liable
20 therefore for paying taxes upon real and personal property and
21 paid to the county treasurer at the time of payment of other
22 taxes² and all personal property assessed against a person
23 shall be liable for the payment of such taxes.
24 (3) The procedure for the sale of such property by the
25 county treasurer for such taxes and must be regulated by

1 15-16-113 and chapter-17-part-9 [section 15]."
2 Section 37. Section 15-16-301, MCA, is amended to
3 read:
4 "15-16-301. Delinquent list -- real property. On the
5 third Monday of December and on the third Monday of June of
6 each year, the county treasurer must make a report to the
7 county clerk and recorder in detail, showing the amount of
8 taxes collected and a complete delinquent list of all
9 persons and property then owing taxes and the county
10 clerk and recorder shall compare such the report with the
11 books of the county treasurer and shall keep a record of
12 such the report in his office."
13 Section 38. Section 15-16-302, MCA, is amended to
14 read:
15 "15-16-302. Tabulation and transmittal of real
16 property delinquent list. (1) The county treasurer must, at
17 the time specified in 15-16-301, deliver to the county clerk
18 and recorder a complete delinquent list of all persons and
19 property then owing taxes.
20 (2) In the list so delivered, all matters and things
21 contained in the assessment book and relating to delinquent
22 persons or property must be set down in numerical or
23 alphabetical order.
24 (3) The county clerk and recorder must carefully
25 compare the list with the assessment book, and if satisfied

1 that it contains a full and true statement of all taxes due
2 and unpaid, he must ~~foot-up-the~~ total the amount of taxes so
3 remaining unpaid, credit the county treasurer ~~who-acted~~
4 ~~and~~ make a final settlement with him the
5 treasurer of all taxes charged against him the treasurer on
6 the assessment book, and ~~must~~ require from him the treasurer
7 an immediate account for any existing deficiency."

8 Section 39. Section 15-16-303, MCA, is amended to
9 read: "15-16-303. Treasurer charged with delinquent taxes.
10 After settlement with the county treasurer as prescribed
11 herein in 15-16-302, the county clerk and recorder must
12 charge the treasurer ~~then-acting~~ with the amount of taxes
13 then due on the delinquent tax list and within 3 days
14 thereafter deliver the list, duly certified, to the county
15 treasurer."

16 Section 40. Section 15-16-305, MCA, is amended to
17 read: "15-16-305. Disposition of delinquent list. (1) The
18 county treasurer must annually on the third Monday of
19 February, attend at the office of the county clerk and
20 recorder with the delinquent list, the county clerk and
21 recorder must then carefully compare the lists with the
22 assessments of persons and property not marked "paid" on the
23 assessment books and when the taxes have been paid, he
24 possession of the person assessed from and after the date
25

the county clerk and recorder must note the fact in the appropriate column in the assessment book.

(2) The county clerk and recorder must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid have been credited in the list with such payment.

(3) The county clerk and recorder must then foot-up total the amount of taxes remaining unpaid and credit the treasurer with the amount and have a final settlement with him the treasurer. The delinquent list must remain in the county clerk and recorder's office.

(4) At the time mentioned in subsection (1) of this section, the treasurer must make an affidavit, endorsed on the list, that the taxes not marked "paid" have not been paid and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them."

Section 41. Section 15-16-401, MCA, is amended to read:
"15-16-401. Tax due as a judgment or lien. Every tax
has the effect of a judgment against the person, and every
lien created by this title has the force and effect of an
execution duly levied against all personal property in the
possession of the person assessed from and after the date

1 the assessment is made. The county treasurer may issue a
2 writ of execution for delinquent personal property taxes and
3 deliver the same writ to the sheriff. The sheriff shall
4 thereupon proceed upon the same writ in all respects, with
5 like effect, and in the same manner prescribed by law in
6 respect to executions issued against property upon judgments
7 of a court of record and shall be entitled to the same fees
8 for his services-in-executing-the-same-to-be-collected-in
9 the same manner provided for in section 15]. The judgment
10 is not satisfied nor the lien removed until the taxes are
11 paid or the property sold for the payment thereof."

12 Section 42. Section 15-16-402, MCA, is amended to
13 read:

14 "15-16-402. Tax on personalty liens on realty --
15 separate assessment. (1) Every tax due upon personal
16 property is a prior lien upon any or all of such property,
17 which lien shall have precedence over any other lien, claim,
18 or demand upon such property, and except as hereinafter
19 provided, every tax upon personal property is also a lien
20 upon the real property of the owner thereof from on and
21 after 12-midnight-of January 1 in of each year.

22 (2) The taxes upon personal property based upon a
23 taxable value up to and including \$1,000 shall be a first
24 and prior lien upon the real property of the owner of such
25 personal property. Taxes upon personal property based upon

1 the taxable value thereof in excess of \$1,000 shall be a
2 first and prior lien upon the real property of the owner;
3 unless the owner or holder of any mortgage or other lien
4 upon said real property appearing of record in the office of
5 the clerk and recorder of the county where such real
6 property is situated, at or before the time such personal
7 property tax attached thereto, shall have filed the notice
8 hereinafter provided for, in which event the taxes upon such
9 excess of \$1,000 of taxable value shall not be a lien on the
10 real property of such owner. It shall be the duty of the
11 county treasurer to issue to any mortgagor or lien holder,
12 upon his request, a statement of the personal property tax
13 due upon the taxable value up to and including \$1,000.
14 Personal property taxes upon a taxable value up to
15 \$1,000 may be paid, redeemed from a tax sale as by law provided, or
16 discharged separately from any personal property taxes in
17 excess of such amount. Payment of such taxes upon a taxable
18 value up to \$1,000, as herein provided, shall operate to
19 discharge the tax lien upon the personal property of the
20 owner to the extent of such payment in the order that the
21 person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real
property who desires to obtain the benefits of this section
shall file in the office of the county treasurer of said
county a notice giving:

1 (a) the name and address of the mortgagee and holder
2 of the mortgage or lien;
3 (b) the name of the reputed owner of the land;
4 (c) the description of the land;
5 (d) the date of record and expiration of the mortgage
6 or lien;
7 (e) the amount thereof; and
8 (f) a statement that he claims the benefit of the
9 provisions of this section.

10 (4) Such notice shall be ineffectual as to any taxes
11 which shall have become a lien on real property prior to the
12 filing of such notice as aforesaid. If the mortgage be not
13 paid at maturity, such notice shall thereafter be filed
14 annually unless the mortgage be extended for a definite
15 period to be stated in such notice.

16 (5) Any owner of a mortgage on real estate upon which
17 personal property taxes are by this section made a lien,
18 where the owner of such real estate and personal property
19 has failed to pay taxes due upon such real estate and
20 personal property for 1 or more years, may file with the
21 department of revenue or its agent in the county in which
22 such property is located a written request to have the
23 personal property and real estate of the owner separately
24 assessed. Such request must be made by registered or
25 certified mail at least 10 days prior to January 1 in the

1 year for which property is assessed. Upon receipt by the
2 department or its agent of such request, it is hereby made
3 the duty of the department or its agent to make a separate
4 assessment of real and personal property of the owner
5 thereof, and such personal taxes shall not be a lien upon
6 the real estate so mortgaged of the owner thereof, and the
7 personal property taxes shall be collected in the manner
8 provided by law for other personal property."

9 Section 43. Section 15-16-404, MCA, is amended to
10 read:
11 "15-16-404. County lien on money of taxpayer. The
12 county has a general lien, dependent on possession, upon any
13 money in its possession belonging to any taxpayer for any
14 amounts due the county for any delinquent personal property
15 taxes not a lien on real estate of the taxpayer. Due notice
16 shall be given the lien holder, if any and no."
17 Section 44. Section 15-16-504, MCA, is amended to
18 read:
19 "15-16-504. Evidence at trial. On the trial a
20 certified copy of the assessment signed by the county clerk
21 and recorder of the county where the same assessment was
22 made, with the affidavit of the treasurer thereto attached
23 that the tax has not been paid, describing it as on the
24 assessment book or delinquent list, is prima facie evidence
25 that such--tax-and-the-pet--amt the taxes plus interest.

Penalties, and costs, are due and entitles him to judgment unless the defendant proves that the tax was paid."

Section 45. Section 15-16-601, MCA, is amended to read:

"15-16-601. Taxes or penalties illegally collected to be refunded. (1) (a) Any taxes, per centum, and interest, penalties, or costs paid more than once or erroneously or illegally collected or any amount of tax paid for which a taxpayer is entitled to a refund under 15-16-612 or any part or portion of taxes paid which were mistakenly computed on government bonus or subsidy received by the taxpayer may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer as provided in 15-1-504 and it shall afterwards appear appears to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said the board of county commissioners may refund such the portion of said the taxes, interest, penalties, and costs so paid to the state treasurer, and upon the rendering of the report required by 15-1-505 the county clerk and recorder shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded--and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer

credit for the state's portion of the amounts so refunded.

(b) When any part of the taxes, interest, penalties, or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public corporation and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(c) No order for the refund of any taxes, license fees--per centum interest, penalties, or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such--tax--license--fees--penalty the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator, which claim must be filed within 10 years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(d) All refunds ordered to be paid by the board of county commissioners shall must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therofrom on account of such other funds.

(2) Upon the entering of judgment under 15-2-306, the

1 county commissioners of the affected county shall order a
2 refund of such portion of the taxes ~~or license fees~~ as the
3 state tax appeal board has judged should be refunded."

4 Section 46. Section 15-16-701, MCA, is amended to
5 read:

6 "15-16-701. Personal property takes ten years
7 delinquent -- list. (1) It shall be the duty of each county
8 treasurer to prepare in triplicate and submit to the board
9 of county commissioners of his county, on or before the
10 first Monday of June in each year, a list of personal
11 property taxes ~~which~~ that are not a lien on real estate and
12 which ~~that~~ have been delinquent for 10 years or more. Said
13 list shall show the following:

14 (a) name and address of the delinquent taxpayer;
15 (b) amount of the delinquent ~~tax~~ taxes, plus ~~penalty~~
16 ~~interest, penalties, and costs~~, if any; and
17 (c) the ~~year~~ date the ~~tax~~ taxes became delinquent.

18 (2) Every county treasurer shall, within the same
19 time, prepare in triplicate and submit to the board of
20 county commissioners of his county a list of all contractual
21 obligations used to or held by his county for seed grain,
22 feed, or other relief, the collection of which is barred by
23 the statute of limitations provided in 27-2-202(1). Said
24 list shall ~~must~~ show the following:

25 (a) the name and address of the person or persons who

1 entered into the contractual obligation;

2 (b) the name of the contractual obligation, as "seed
3 loan", "feed loan", "promissory note", as the case may be
4 applicable; and

5 (c) the date of obligation, date when last payment
6 became due, date of last payment thereon, and the date when
7 the collection of the obligation became barred by ~~and~~ the
8 statute of limitations provided in 27-2-202(1)." "

9 Section 47. Section 15-16-702, MCA, is amended to
10 read:

11 "15-16-702. Cancellation of taxes and obligations --
12 filing of lists. Upon receipt of such list or lists and
13 within 30 days thereafter, the board of county commissioners
14 shall examine the same and make any necessary corrections.
15 Thereupon, the board of county commissioners shall make its
16 order canceling all such personal property taxes and
17 contractual obligations contained in ~~such~~ the list or lists,
18 as corrected, required by this part to be canceled and
19 spread such order upon its minutes. Said The order and
20 minutes need not set forth in full the contents of ~~such~~ the
21 list or lists, a proper reference therein for their
22 identification being sufficient. At the time of making such
23 order when the order is made, the original or copy of such
24 list or lists, as corrected, and it must be filed with
25 and as a part of the records of the board. One legible copy

thereof shall be filed with the county clerk and recorder as a public record, and one legible copy thereof shall be filed with the county treasurer as a permanent record of his office."

Section 48. Section 15-16-703, MCA, is amended to read:

"15-16-703. Adjustment of accounts after cancellation. Upon notification of the above order for cancellation, the county clerk and recorder and county treasurer must shall adjust their takes-receivable accounts to conform to the stated order of cancellation."

Section 49. Section 15-16-704, MCA, is amended to read:

"15-16-704. Certain unpaid taxes uncollectable -- stricken from records. All unpaid taxes -- high--constitute constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectable and stricken from the respective tax records."

Section 50. Section 15-23-704, MCA, is amended to read:

"15-23-704. Lien of tax -- enforcement of payment. The

tax on gross proceeds from coal shall be levied as takes on other forms of property, and this tax and the severance tax on coal production are each a lien upon the coal mine and a prior lien upon all personal property and improvements used to produce the coal. These taxes may be collected by the seizure and sale of the personal property on which the tax is levied as provided under 15-16-113 and chapter-177-part 9--or--by--ant--under-15-16-501-and-is-16-502 [section 15]."

Section 51. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408², 15-16-111 through 15-16-115², 15-16-404², chapter-177-part--97 [section 15], and 15-24-202², as amended, except:

(1) taxation of motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited above; and

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 52. Section 76-13-211, MCA, is amended to read:

"76-13-211. Amount due for protection treated as lien.

1 (1) Whenever the department provides forest protection
2 during a forest fire season for any forest land or timber
3 not protected by the owner thereof as required by this part
4 or part 1, the amount due for the forest protection is a
5 lien upon the land or timber which shall continue until such
6 time as the amount due is paid.

7 (2) The lien has the same force, effect, and priority
8 as general tax liens under the laws of the state and is
9 subject and inferior only to tax liens on the lands. The
10 county attorney of the county in which the land is situated
11 shall on request of the department foreclose the lien in the
12 name of the state and in the manner provided by law, or the
13 county attorney upon the request of the department shall
14 institute an action against the forest landowner in the name
15 of the state in any district or justice court having
16 jurisdiction to recover the debt. The state in the action is
17 not required to pay any fees or costs to the clerk of the
18 court or justice of the peace. ~~the-complaint-and-all
subsequent-proceedings-in-the-action shall conform-as-nearly
as-practicable-to-those PROVIDED-by-15-16-592-~~

19 (3) The remedies provided by this section are
20 cumulative and do not affect the other provisions of this
21 part or part 1 for the payment and collection of amounts due
22 to the department."

23 Section 53. Section 85-7-2152, MCA, is amended to

1 read:
2 "85-7-2152. Proceeds of sale. Whenever any lot, tract,
3 piece, or parcel of land included within and forming a part
4 of any irrigation district created under the provisions of
5 this chapter or included within any extension of such
6 district is sold by the treasurer of the county where such
7 land is situated in the manner provided by law for the sale
8 of lands for delinquent taxes for state and county purposes
9 and taxes or assessments of the irrigation district form all
10 or a part of the taxes for which such lands are sold, the
11 county treasurer making such sale or sales shall place to
12 the credit of the proper funds of such irrigation district
13 out of the proceeds of the sale or sales, the total tax or
14 assessment of the irrigation district, inclusive of the
15 interest and penalty thereon as provided for by the general
16 laws relating to delinquent taxes for state and county
17 purposes, and whenever any such lands are struck off at such
18 sale to the county where they are situated pursuant to the
19 provisions of 15-17-207 [section 8], the county treasurer of
20 the county must, upon the issuance of the certificate of tax
21 sale to the county, issue to the irrigation district, in its
22 corporate name, a debenture certificate for the amount of
23 taxes and assessments due to the irrigation district from
24 the lands and premises so sold, inclusive of the interest
25 and penalty thereon, which certificate is evidence of and

1 conclusive of the interest and claim of the irrigation
2 district in, to, against, and upon the lands and premises so
3 struck off to the county at the tax sale, and after the
4 issuance of the certificate, the sum named therein and the
5 taxes and assessments of the district evidenced thereby
6 shall bear interest at the rate of 1½ a month from the date
7 of the certificate until redeemed in the manner provided for
8 by law for the redemption of the lands sold for delinquent
9 state and county taxes or until paid from the proceeds of
10 the sale of the lands and premises described therein in the
11 manner provided for by law, and duplicates of such
12 certificates so issued to the irrigation district shall be
13 filed in the office of the county clerk and county treasurer
14 of the county with the certificate of tax sale of the lands
15 and premises."

16 Section 54. Section 85-7-2154, MCA, is amended to
17 read:

18 "85-7-2154. Redemption of lands sold. Upon the
19 redemption of any lands so sold for taxes in the manner
20 provided for by ~~15-10-101~~ [sections 16 through 26], the
21 county treasurer of said county, out of the redemption
22 money, shall pay to the holder or holders of such
23 certificate or certificates the sums for which the same were
24 issued, with interest as therein provided to the date of the
25 redemption of said lands."

1 Section 55. Section 85-7-2155, MCA, is amended to
2 read:
3 "85-7-2155. Sale by county commissioners when land not
4 redeemed. When the lands and premises so sold for taxes and
5 upon and against which the certificates have been issued for
6 the taxes and assessments of the irrigation district are not
7 redeemed within the time provided for by ~~15-10-101~~ [section
8 16], the board of county commissioners of the county, within
9 3 months thereafter, shall cause these lands and premises to
10 be sold as provided for by law, and out of the proceeds of
11 the sale, the county treasurer of the county shall pay to
12 the holder or holders of the certificates the sum for which
13 the same were issued, with interest as provided for to the
14 date of the sale of the lands by the board of county
15 commissioners, and no lands and premises so held by any
16 county and against which the certificates provided for by
17 this chapter have been issued may, upon such sale, be struck
18 off or sold for a less sum than the amount of taxes and
19 assessments of the irrigation district represented by the
20 certificate, inclusive of the interest thereon, in addition
21 to the state and county taxes, if any, against the same."

22 Section 56. Section 85-7-2156, MCA, is amended to
23 read:
24 "85-7-2156. Proceedings where land struck off to
25 county and not redeemed. In case the property so assessed

1 (1) Whenever the department provides forest protection
2 during a forest fire season for any forest land or timber
3 not protected by the owner thereof as required by this part
4 or part 1, the amount due for the forest protection is a
5 lien upon the land or timber which shall continue until such
6 time as the amount due is paid.

7 (2) The lien has the same force, effect, and priority
8 as general tax liens under the laws of the state and is
9 subject and inferior only to tax liens on the lands. The
10 county attorney of the county in which the land is situated
11 shall on request of the department foreclose the lien in the
12 name of the state and in the manner provided by law, or the
13 county attorney upon the request of the department shall
14 institute an action against the forest landowner in the name
15 of the state in any district or justice court having
16 jurisdiction to recover the debt. The state in the action is
17 not required to pay any fees or costs to the clerk of the
18 court or justice of the peace. The--complainant--and--all
19 subsequent proceedings in the action shall conform as nearly
20 as practicable to those provided by IS-16-592.

21 (3) The remedies provided by this section are
22 cumulative and do not affect the other provisions of this
23 part or part 1 for the payment and collection of amounts due
24 to the department."

25 Section 53. Section 85-7-2152, MCA, is amended to

1 read:
2 "85-7-2152. Proceeds of sale. Whenever any lot, tract,
3 pieces, or parcel of land included within and forming a part
4 of any irrigation district created under the provisions of
5 this chapter or included within any extension of such
6 district is sold by the treasurer of the county where such
7 land is situated in the manner provided by law for the sale
8 of lands for delinquent taxes for state and county purposes
9 and taxes or assessments of the irrigation district from all
10 or a part of the taxes for which such lands are sold, the
11 county treasurer making such sale or sales shall place to
12 the credit of the proper funds of such irrigation district,
13 out of the proceeds of the sale or sales, the total tax or
14 assessment of the irrigation district, inclusive of the
15 interest and penalty thereon as provided for by the general
16 laws relating to delinquent taxes for state and county
17 purposes, and whenever any such lands are struck off at such
18 sale to the county where they are situated pursuant to the
19 provisions of IS-12-287 [section 8], the county treasurer of
20 the county must, upon the issuance of the certificate of tax
21 sale to the county, issue to the irrigation district, in its
22 corporate name, a debenture certificate for the amount of
23 taxes and assessments due to the irrigation district from
24 the lands and premises so sold, inclusive of the interest
25 and penalty thereon, which certificate is evidence of and

1 conclusive of the interest and claim of the irrigation
2 district in, to, against, and upon the lands and premises so
3 struck off to the county at the tax sale, and after the
4 issuance of the certificate, the sum named therein and the
5 taxes and assessments of the district evidenced thereby
6 shall bear interest at the rate of 1½ month from the date
7 of the certificate until redeemed in the manner provided for
8 by law for the redemption of the lands sold for delinquent
9 state and county taxes or until paid from the proceeds of
10 the sale of the lands and premises described therein in the
11 manner provided for by law, and duplicates of such
12 certificates so issued to the irrigation district shall be
13 filed in the office of the county clerk and county treasurer
14 of the county with the certificate of tax sale of the lands
15 and premises."

16 Section 54. Section 85-7-2154, MCA, is amended to
17 read:

18 "85-7-2154. Redemption of lands sold. Upon the
19 redemption of any lands so sold for taxes in the manner
20 provided for by ~~15-18-18~~ Sections 16 through 26], the
21 county treasurer of said county, out of the redemption
22 money, shall pay to the holder or holders of such
23 certificate or certificates the sums for which the same were
24 issued, with interest as therein provided to the date of the
25 redemption of said lands."

1 Section 55. Section 85-7-2155, MCA, is amended to
2 read:
3 "85-7-2155. Sale by county commissioners when land not
4 redeemed. When the lands and premises so sold for taxes and
5 upon and against which the certificates have been issued for
6 the taxes and assessment of the irrigation district are not
7 redeemed within the time provided for by ~~15-18-18~~ Section 16,
8 the board of county commissioners of the county, within
9 3 months thereafter, shall cause these lands and premises to
10 be sold as provided for by law, and out of the proceeds of
11 the sale, the county treasurer of the county shall pay to
12 the holder or holders of the certificates the sum for which
13 the same were issued, with interest as provided for to the
14 date of the sale of the lands by the board of county
15 commissioners, and no lands and premises so held by any
16 county and against which the certificates provided for by
17 this chapter have been issued may, upon such sale, be struck
18 off or sold for a less sum than the amount of taxes and
19 assessments of the irrigation district represented by the
20 certificate, inclusive of the interest thereon, in addition
21 to the state and county taxes, if any, against the same."

22 Section 56. Section 85-7-2156, MCA, is amended to
23 read:
24 "85-7-2156. Proceedings where land struck off to
25 county and not redeemed. In case the property so assessed

1 regarding the notice required in [section 21].
2 NEW SECTION. Section 62. Saving clause. This act does
3 not affect rights and duties that matured. Penalties that
4 were incurred, or proceedings that were begun before the
5 effective date of this act.
6 NEW SECTION. Section 63. Effective date. This act is
7 effective on passage and approval.

-End-



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